

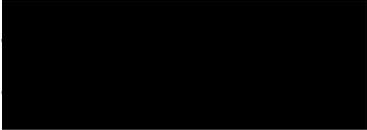
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U.S. Department of Homeland Security
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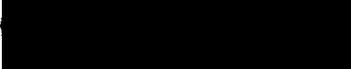
U.S. Citizenship
and Immigration
Services

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FILE:  Office: DENVER, COLORADO Date: FEB 17 2005

IN RE: 

APPLICATION: Application for Waiver of of the Foreign Residence Requirement under Section 212(e) of the Immigration and Nationality Act; 8 U.S.C. § 1182(e).

ON BEHALF OF APPLICANT:

SELF REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Zambia. He was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on July 24, 1990. The applicant is subject to the two-year foreign-residence requirement under section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e) because his visit was sponsored by the United States Information Agency. The record reflects that the applicant's wife is a Zambian citizen, and that they have two United States Citizen children, (12 years old) and (years old). The applicant seeks a waiver of his two-year residence requirement in Zambia, based on the claim that his two children would suffer exceptional hardship if they accompany him to Zambia.

The Director found that the applicant failed to establish that his compliance with the two-year foreign residence requirement would impose an exceptional hardship on his United States citizen children. The application was denied accordingly. *Decision of the Interim District Director, Denver, Colorado, dated December 17, 2003.*

On appeal, the applicant maintains that he and his family will suffer exceptional hardship if they move to Zambia. In support of the appeal, the applicant submitted a statement, his son's birth certificate, a letter from Copperbelt University in Zambia terminating the applicant's employment, a copy of a speech delivered by the applicant in the United States on Zambian politics, the applicant's transcript from the University of Denver, and a letter from the National Archives of Zambia acknowledging receipt of a Reform Party Manifesto from the applicant.

Section 212(e) of the Act states in pertinent part that:

No person admitted under section 101(a)(15)(J) or acquiring such status after admission

- (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence,
- (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or
- (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii),

pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of the Immigration and Naturalization [now, the Director of Citizenship and Immigration Services (CIS)] after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General [now the Secretary, Homeland Security, "Secretary"] may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General [Secretary] to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(l): And provided further, That, except in the case of an alien described in clause (iii), the Attorney General [Secretary] may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

In *Keh Tong Chen v. Attorney General of the United States*, 546 F. Supp. 1060, 1064 (D.D.C. 1982), the U.S. District Court, District of Columbia stated that:

Courts deciding [section] 212(e) cases have consistently emphasized the Congressional determination that it is detrimental to the purposes of the program and to the national interests of the countries concerned to apply a lenient policy in the adjudication of waivers including cases where marriage occurring in the United States, or the birth of a child or children, is used to support the contention that the exchange alien's departure from his country would cause personal hardship. Courts have effectuated Congressional intent by declining to find exceptional hardship unless the degree of hardship expected was greater than the anxiety, loneliness, and altered financial circumstances ordinarily anticipated from a two-year sojourn abroad." (Quotations and citations omitted.)

At the outset, the AAO notes that the applicant and his wife have two United States citizen children, ages 4 and 12. The applicant's wife is a citizen of Zambia and does not have legal status in the United States. If the applicant's waiver is denied, the entire family will have to move to Zambia. Accordingly, this decision only addresses the potential hardship that the United States citizen children will experience in Zambia.

First examined is the economic impact of the applicant's departure. The applicant stated that he would return to Zambia without a job and that the unemployment rate in Zambia is over 80 percent. Before coming to the United States, the applicant was employed by Copperbelt University in Kitwe, Zambia. The University terminated the applicant's employment on May 8, 1998, because he failed to return to Zambia after December 1997, the time he was originally scheduled to complete his Masters Degree. The applicant received a Masters Degree in International Studies from the University of Denver on August 14, 1998. The applicant has not established that he would be unable to find satisfactory employment in Zambia. Given the applicant's advanced education, his employment opportunities are presumably above average. Aside from referring to

his termination from Copperbelt University, the applicant provided no other analysis of his employment prospects. The applicant's reference to the high unemployment rate in Zambia is not supported by documentation.

Next examined are the educational and health care opportunities in Zambia for the applicant's two United States citizen children. The applicant stated "there are cost-sharing arrangements in formal education and the dispensation of health care in Zambia, a situation which is overwhelmingly unfavorable for my family." The applicant provided no explanation of how the education and health care systems operate, nor does he explain how his children would be affected. Additionally, the applicant provided no documentation.

The AAO finds that the evidence in the record fails to establish that the applicant's two United States citizen children will suffer exceptional hardship in Zambia during the two years the applicant is required to live there.

The burden of proving eligibility for a waiver under section 212(e) of the Act rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that in the present case, the applicant has not met his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.