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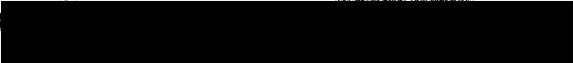
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Office: CALIFORNIA SERVICE CENTER

Date: FEB 22 2005

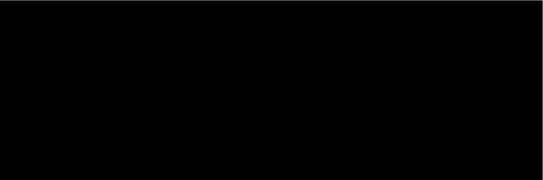
IN RE:



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:



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 Director, California Service Center, 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 the Philippines. He was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on July 17, 1999 to attend graduate school at Harvard University, Cambridge, Massachusetts. 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). The record reflects that the applicant married [REDACTED] (hereinafter [REDACTED] a United States citizen, on November 8, 2002. The applicant has two children (not United States citizens) from a previous marriage. The applicant seeks a waiver of his two-year residence requirement in the Philippines, based on the claim that his wife would suffer exceptional hardship if she moved to the Philippines with the applicant for the two years he is required to live there, or if she remained in the United States while the applicant lived in the Philippines.

The Director concluded that the hardships set forth by the applicant do not constitute exceptional hardships. The application was denied accordingly. *Decision of the Director*, California Service Center, Laguna Niguel, California, dated May 5, 2004.

On appeal, counsel contends that the applicant's departure from the United States will impose exceptional hardship on [REDACTED] because the "hardship to [REDACTED] goes beyond mere depression and anxiety and the [REDACTED]'s absence from the United States would likely work a detrimental, if not severe, impact upon her physical health and well-being." In support of the appeal, counsel submitted a brief; a medical assessment of [REDACTED] a medical encyclopedia entry on Chronic Renal Failure; Ms. [REDACTED] declaration, and the results of a pregnancy test showing that [REDACTED] is pregnant. The entire record was considered in rendering this decision.

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 *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals stated that, "[E]ven though it is established that the requisite hardship would occur abroad, it must also be shown that the spouse would suffer as the result of having to remain in the United States. Temporary separation, even though abnormal, is a problem many families face in life and, in and of itself, does not represent exceptional hardship as contemplated by section 212(e)."

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.)

I. Potential Hardship if [REDACTED] Accompanies the Applicant to the Philippines

First analyzed is the potential hardship [REDACTED] will experience if she relocates to the Philippines with the applicant for the two years he is required to live there. Counsel asserts that [REDACTED] would

experience career disruption and absence from her permanent home; however, the record contains no analysis or evidence to establish that this would constitute exceptional hardship.

In support of the original waiver application, counsel submitted country conditions information describing terrorism in the Philippines. A January 16, 2004 Public Announcement from the United States Department of State indicated:

The terrorist threat to Americans in the Philippines remains high, and the Embassy continues to receive reports of ongoing activities by known terrorist groups. In view of a number of security-related incidents and the possibility of future terrorism, and other violence or criminal activity, Americans traveling to or residing in the Philippines are urged to exercise great caution and heightened security awareness. Extremist groups in Southeast Asia, such as [REDACTED] have demonstrated transnational capabilities to carry out attacks against locations where Westerners congregate. Terrorist groups do not distinguish between official and civilian targets.

Counsel maintains that [REDACTED] has medical conditions that could not be properly treated in the Philippines. [REDACTED] doctor, [REDACTED] M.D., stated in a May 24, 2004 letter that Ms. [REDACTED] suffers from Hypertension and IGA Nephropathy (a kidney disorder which results in Chronic Renal Insufficiency). [REDACTED] explained:

[REDACTED] medical care requires the close monitoring of her renal function through frequent and regular blood work and urinalysis. She has a standing order for these tests to be done on a monthly basis as a means to ensure that any further deterioration in her condition is aggressively and promptly managed. Moreover, she is currently on anti-hypertensive medications to control her hypertension and Proteinuria.

The importance and need to be where medical care is accessible and where specialists are available to her have also been stressed upon [REDACTED]

Several doctors in California have treated [REDACTED]. Her medical care is covered by health insurance. [REDACTED] moves to the Philippines, she may not have access to appropriate medical care or to the necessary specialists.

The AAO finds that [REDACTED] medical condition, combined with the risk of being targeted by terrorists because she is American, will cause her to experience exceptional hardship if she moves to the Philippines.

II. Potential Hardship if [REDACTED] Remains in the United States

Next examined is the potential hardship [REDACTED] if she stays in the United States during the two years the applicant is required to live there. Counsel stated that when [REDACTED] learned that the applicant would have to leave the United States for two years, she began to experience emotional and psychological stress. Counsel contends that separating [REDACTED] from her husband will lead to a worsening of her physical health. In the letter quoted above [REDACTED] recommended that [REDACTED]

avoid stressful situations that could worsen her blood pressure, but he made no reference to the applicant's possible move to the Philippines.

[REDACTED] a psychiatrist, began treating [REDACTED] in June 2003. In a November 11, 2003 letter that was submitted with the original waiver application, [REDACTED] stated:

The patient is diagnosed with Adjustment Reaction with Depression and Anxiety. The patient's condition was mainly precipitated by her concern regarding her possible separation from her husband and his two (2) children.

The patient is under medication and is taking treatment and psychotherapy prescribed by me. Her therapy includes visits to my office and her counselor. Her condition is stable, however, she needs to continue her medication and treatment until she is completely recovered.

In my opinion, if the husband and children are forced to leave the United States for a prolonged period of time, a considerable risk is placed on the patient's recovery because the patient has drawn significant emotional and psychological support from her husband and family. The patient's separation from her husband and children can devastate her and can even cause the patient's condition to deteriorate to a major depressive episode, moreso [sic], because the patient revealed that her relationship with her husband is very precious since this is her first marriage.

It appears that [REDACTED] depression and anxiety are being effectively treated by medication and counseling. Counsel submitted no documentation to indicate that [REDACTED] condition has worsened since [REDACTED] wrote his letter.

The AAO notes that [REDACTED] lives in California, and the applicant lives in Texas, where he has been attending graduate school (in pursuit of a Ph.D.) at the University of Texas since August 2001. The applicant's children live in New Jersey. The fact that the applicant and [REDACTED] have lived in separate states for several years undermines the applicant's claim that [REDACTED] will experience hardship if the applicant moves to the Philippines for two years. [REDACTED] asserted that [REDACTED] could be devastated if she is separated from the applicant and his children; however, the applicant, his children, and Ms. [REDACTED] have lived in three separate states for several years.

III. Conclusion

The AAO finds that the evidence in the record establishes that the applicant's wife would experience exceptional hardship if she traveled to the Philippines with the applicant. The AAO also finds that the evidence in the record fails to establish that the applicant's wife would experience exceptional hardship if she remained in the United States while the applicant returned temporarily to the Philippines.

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.