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U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 20 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, Vermont 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 Haiti. He was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on August 2, 1994 to attend Broome Community College in Binghamton, New York. 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] a United States citizen (USC), on March 12, 1997. The applicant seeks a waiver of his two-year residence requirement in Haiti, based on the claim that his wife would experience exceptional hardship if she moved to Haiti with the applicant for the two years he is required to live there, or if she remained in the United States.

The director concluded that the applicant's spouse would experience exceptional hardship if she accompanied the applicant to Haiti for two years, but that she would not experience exceptional hardship if she remained in the United States while the applicant lived in Haiti for two years. The application was denied accordingly. *Decision of the Director, Vermont Service Center, dated August 16, 2004.*

On appeal, counsel contends that [REDACTED] will experience exceptional hardship if she moves to Haiti for two years with her husband, or if she remains in the United States while he lives in Haiti for two years. In support of the appeal, counsel submitted a brief; reports and articles on country conditions in Haiti, including a September 28, 2004 *United States Department of State Travel Warning*; a letter from the physician treating [REDACTED] her; and several AAO decisions. 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 Haiti

First analyzed is the potential hardship [REDACTED] will experience if she relocates to Haiti with the applicant for the two years he is required to live there. After reviewing the extensive documentation in the record concerning the instability of Haiti's political, social and economic systems, the director concluded that

██████████ would experience exceptional hardship if she lived with the applicant in Haiti for two years.

The AAO finds that the director's decision is supported by the evidence in the record. Accordingly, counsel has established that the applicant's wife will experience exceptional hardship if she accompanies her husband to Haiti for two years.

II. Potential Hardship if ██████████ Remains in the United States

Next examined is the potential hardship to ██████████ if she stays in the United States during the two years the applicant is required to live in Haiti. As a USC ██████████ is not required to accompany the applicant to Haiti. Counsel asserts that:

Mrs. ██████████ mental health would suffer greatly if her husband was required to leave her in the United States. She requires the financial and emotional support of her husband so that she can continue to both work full-time and care for her mother during off hours. Furthermore, Mrs. ██████████ mother's health problems increase the need for extra financial and emotional support from her husband since she is the primary caretaker.

The physician who treats Ms. ██████████ mother diagnosed her as suffering from hypertension, osteoarthritis, degenerative disc disease of spine, osteoporosis and coronary artery disease. In her affidavit in support of the I-612 Application for Waiver of the Foreign Residence Requirement, Ms. ██████████ indicated that she is her mother's primary caretaker.

The AAO finds that the Ms. ██████████ will not experience exceptional hardship if she remains in the United States while the applicant lives in Haiti for two years. First, the record contains no evidence to establish that Ms. ██████████ cannot survive financially for two years without the applicant's support. Ms. ██████████ has worked for approximately seven years as a Certified Nurses Aide for Sunrest Health Facilities. The applicant serves as Head Deacon at Ephraim Seventh-Day Adventist Church in Amityville, New York. The record does not indicate the applicant's salary or what his financial contribution to the family is, nor is there documentation of family expenses. Second, Ms. ██████████ stated that the majority of her family members live in the United States and have lawful status, including two USC brothers. In an affidavit in support of the I-612, the applicant's brother, ██████████ stated that he works as an account executive for Regional Planning Associates in Babylon, New York. Counsel has submitted no evidence demonstrating that Ms. ██████████ family members are unable to assist her in financially supporting, and physically taking care of, her mother. Third, counsel has provided no evidence to establish that the emotional effects of the two-year separation would go beyond the normal loneliness and anxiety associated with such a separation. Finally, the AAO notes that Ms. ██████████ family members in the United States can provide her emotional support while the applicant lives in Haiti for two 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 Haiti 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 Haiti.

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.