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U.S. Citizenship
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Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: JUL 20 2005

LIN-04-135-52121

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 Director, Nebraska 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 Azerbaijan. She was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on August 9, 2002 to attend Indiana University in Bloomington, Indiana. 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] (Mr. [REDACTED]) a United States citizen (USC), on March 21, 2003. The applicant stated that she was scheduled to return to Azerbaijan on July 5, 2004; however, the record contains no evidence indicating that the applicant in fact left. The applicant seeks a waiver of her two-year residence requirement in Azerbaijan, based on the claim that her husband would experience exceptional hardship if he moved to Azerbaijan with the applicant for the two years she is required to live there, or if he remained in the United States.

The director concluded that the applicant's compliance with the two-year foreign residence requirement would not impose an exceptional hardship to her USC spouse. The application was denied accordingly. *Decision of the Director*, Nebraska Service Center, dated June 3, 2004.

The applicant contends that her husband cannot take up residence in Azerbaijan because:

- 1) Her family does not approve of the marriage and has threatened both the applicant and her husband;
- 2) The community does not approve of Azeri women marrying non-Azeri men and has harassed the applicant and her husband;
- 3) The socio-political situation in Azerbaijan is unstable. The government does not tolerate opposition political viewpoints, and the country is impoverished;
- 4) Mr. [REDACTED] is an expert on the newly independent Azerbaijan, and he has written articles critical of the current government;
- 5) Mr. [REDACTED] has received an offer of conditional employment from the U.S. Central Intelligence Agency for the position of political analyst, and he must remain in the United States to take the job.

In support of the appeal, the applicant submitted a statement; a letter from the Central Intelligence Agency (CIA) offering Mr. [REDACTED] conditional employment; a consulting agreement between the National Bureau of Asian Research and Mr. [REDACTED]; and two articles from the Azerbaijan Daily Digest on the political situation in Azerbaijan. In support of the original waiver application, the applicant submitted a statement; her I-94 admission record; and her marriage certificate. 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 Mr. [REDACTED] Accompanies the Applicant to Azerbaijan

First analyzed is the potential hardship Mr. [REDACTED] will experience if he relocates to Azerbaijan with the applicant for the two years she is required to live there. The AAO finds that the applicant has demonstrated that her husband will experience exceptional hardship if he accompanies her to Azerbaijan. First, the applicant described the negative community perception and harassment of mixed couples in Azerbaijan:

In Azerbaijan, a marriage or public relationship between an Azeri woman and a non-Azeri man is regarded with discontent, unfriendliness and sometimes hostility. Together or apart, mixed couples are subject to light or medium abuse, including hustling, mistreatment, and harassment. This is true not only of the common people in the street, but also by public officials, particularly the police.

On at least five separate occasions, the police have targeted us merely on the basis of appearance and under the cover of night. On one such episode, the police began to follow us almost as soon as we left a restaurant. We suspected the police had been lying in wait outside of the restaurant, looking for mixed couples. We had seen policemen in unmarked cars waiting suspiciously near places frequented by foreigners.

Since Azerbaijan is a country mainly consisting of conservative Muslims and because of the boom of foreign companies in the country, feelings of resentment toward expatriates has grown. This is especially visible when Western men are with local women.

If Mr. [REDACTED] lived with the applicant in Azerbaijan for two years, the couple would likely face hostility and harassment. The fact that the applicant's family is openly hostile toward the marriage exacerbates the situation because the applicant and her husband cannot count on the family to help them cope with society hostility.

Second, Mr. [REDACTED] is a recognized expert on Azerbaijan and has written articles critical of the current regime. For example, Mr. [REDACTED] wrote an article on Azerbaijan that appeared in *Nations in Transit 2001*, a Freedom House publication. The article reported on corruption and election fraud. Mr. [REDACTED] position as a foreign critic could put him at risk if he lived in Azerbaijan for two years.

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

Next examined is the potential hardship to Mr. [REDACTED] if he stays in the United States during the two years the applicant is required to live in Azerbaijan. As a USC, Mr. [REDACTED] is not required to accompany the applicant to Azerbaijan. In the applicant's statements, she makes two brief references to the potential effects of the separation. First, the applicant stated that in order for Mr. [REDACTED] to take the position with the CIA, he would have to remain in the United States, which "means that I may have to return to Azerbaijan alone, not an

easy separation for a couple married for only a year.” The applicant offered no explanation of what the possible effects would be, nor has she established that the potential hardship goes beyond what is normally associated with such a separation. Second, in regard to her family’s hostility to the marriage, the applicant stated that “if I go alone to wait out this residency requirement, I may be able to stall them.” This indicates that the applicant believes she could deal with her family while living apart from her husband in Azerbaijan for two years. Accordingly, the applicant has not demonstrated that her husband would experience exceptional hardship if he remains in the United States while she lives in Azerbaijan for two years.

III. Conclusion

The AAO finds that the evidence in the record establishes that the applicant’s husband would experience exceptional hardship if he traveled to Azerbaijan with the applicant. The AAO also finds that the evidence in the record fails to establish that the applicant’s husband would experience exceptional hardship if he remained in the United States while the applicant returned temporarily to Azerbaijan.

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.