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**U.S. Citizenship
and Immigration
Services**

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FILE:

Office: NEBRASKA SERVICE CENTER

Date **MAR 10 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 Russia. She was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on August 20, 1993 to attend Brookside High School in Sheffield Lake, Ohio. 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, M [REDACTED]) a United States citizen (USC), on April 28, 2001. The applicant seeks a waiver of her two-year residence requirement in Russia, based on the claim that her husband would experience exceptional hardship if he moved to Russia 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 circumstances of a two-year separation of the family with accompanying anxiety, loneliness and altered financial circumstances are the hardships to be anticipated by compliance with the two-year residence requirement, not exceptional hardship. The application was denied accordingly. *Decision of the Director*, Nebraska Service Center, Lincoln, Nebraska, dated May 13, 2004.

On appeal, counsel contends that the Applicant's husband will suffer exceptional hardship if he accompanies the applicant to Russia, or if he remains in the United States. In support of the appeal, counsel submitted a brief; affidavits from the applicant, Mr [REDACTED], and Mr [REDACTED] s parents; the applicant and Mr [REDACTED] marriage certificate; Mr [REDACTED] birth certificate; the applicant's academic records; medical records for the applicant's parents; two psychological assessments of Mr [REDACTED] physician letter regarding the applicant; physician letter regarding Mr [REDACTED] financial documents; letters of support from relatives, friends, and church officials; and Russian country conditions information. The entire record was considered in rendering this decision.¹

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

¹ The AAO notes that at the conclusion of her J-1 status, the applicant returned to Russia on July 7, 1994 and lived there until September 9, 1995. The 429 days that the applicant lived in Russia counted toward fulfilling the two-year residency requirement. Accordingly, the AAO's analysis of potential hardship to Mr [REDACTED] will be based on the ten months that the applicant is required to live in Russia.

(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(I): 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. (emphasis added)

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 Russia

First analyzed is the potential hardship Mr. [REDACTED] will experience if he relocates to Russia with the applicant for the ten months she is required to live there. Mr. [REDACTED] is an only child. His mother is disabled and cannot work or drive. Mr. [REDACTED] father has suffered two heart attacks and is diabetic. Both parents have limited ability to perform physical labor and rely on Mr. [REDACTED] who lives five minutes away, for help with essential household tasks. If Mr. [REDACTED] moved to Russia for ten months, he would experience emotional strain caused by concern for his parents.

Mr. [REDACTED] works as an Assistant Superintendent at Oster Homes, a residential construction company. Most Russians live in commercial apartment buildings, so there is relatively little residential construction in Russia. The lack of residential construction, combined with Mr. [REDACTED] inability to speak Russian, may make it difficult for him to find suitable employment in Russia.

Mr. [REDACTED] is a Pentecostal Christian. He has served as a youth leader at his church for several years and is in the process of obtaining a ministerial license in the Church of God denomination. Mr. [REDACTED] participates in a wide variety of church activities, including community outreach. The record contains several letters attesting to Mr. [REDACTED] extensive involvement in the church. Mr. [REDACTED] indicated that he is fully committed to serving God through his church; therefore, he would continue his activities in Russia. Counsel submitted reports and articles addressing the treatment of minority religious groups, i.e. those outside the Russian Orthodox Church, in Russia. These reports and articles indicate that there are a substantial number of Pentecostal Christians in Russia, but that the freedom to practice is sometimes limited. According to the United States Department of State's *International Religious Freedom Report 2004*:

Religious matters are not a source of societal hostility for most citizens; however, many citizens firmly believe that at least nominal adherence to the ROC (Russian Orthodox Church) is at the heart of what it means to be Russian. Popular attitudes toward traditionally Muslim ethnic groups are negative in many regions, and there are manifestations of anti-Semitism as well as societal hostility toward Roman Catholics and newer, non-Orthodox religions. Instances of religiously motivated violence continue.

The *Report* further stated:

In March, a lawyer noted that the situation for Protestants in the country has been dramatically worsening for the last four years. A Pentecostal prayer center in Moscow Oblast was set on fire in February and similar incidents were reported in [REDACTED]. Local law enforcement agencies have taken no actions in any of these cases.

It appears that Mr. [REDACTED] may have difficulty in freely practicing his religion if he moves to Russia.

The AAO finds that the combination of separation from his parents, difficulty finding employment, and possible limits on practicing his religion, will cause Mr. Hower to experience exceptional hardship if he moves to Russia.

II. Potential Hardship if Mr. Hower Remains in the United States

Next examined is the potential hardship to Mr. [REDACTED] if he stays in the United States during the ten months the applicant is required to live in Russia. Counsel contends that if the family is separated, Mr. [REDACTED] will face exceptional hardship because he will have to support two households. Counsel provided no evidence to establish that Mr. [REDACTED] will be unable to support himself and his wife in Russia.

Counsel asserts that Mr. [REDACTED] will suffer exceptional emotional hardship if he is separated from the applicant for two years. The record contains the results of two psychological evaluations of Mr. [REDACTED] from Psychiatric & Psychological Services in Elyria, Ohio: [REDACTED] a Licensed Professional Clinical Counselor, prepared the first evaluation, which is dated August 19, 2003. The evaluation was based on an interview with the applicant and Mr. [REDACTED] a separate interview with Mr. [REDACTED] and the administration of the Minnesota Multiphasic Personality Inventory-2 to Mr. Hower. Mr. [REDACTED] concluded:

Mr. [REDACTED] is experiencing a Major Depression, single episode. The identified depression is clearly evident in test results, interview observations, and by way of personal history as reported both by Mr. [REDACTED] and his wife. It is my opinion that the depression has been brought on by the stress associated with the immigration problem that began one year ago. It is also my opinion that Mr. [REDACTED] is in need of treatment for this depression. I have recommended to him that he consult with his family physician to discuss beginning a regimen of anti-depressant medication. He was also recommended to seek out psychotherapy. He was open to both recommendations.

Christine Saladin, a Licensed Professional Clinical Counselor, prepared the second evaluation, which is dated June 7, 2004. The evaluation was based on an interview with Mr. [REDACTED] the administration of the Minnesota Multiphasic Personality Inventory-2 to Mr. [REDACTED] the administration of the Beck Depression Inventory to Mr. [REDACTED] and a review of prior corroborative data (previous psychological evaluation, notes from family physician). Ms. [REDACTED] indicated that Mr. [REDACTED] mental state was extremely compromised because he suffers from Major Depression, and she concluded:

In summary, based upon Mr. [REDACTED] history and the result of this evaluative process, Mr. [REDACTED] is in a fragile mental state. Mr. [REDACTED] already profound mental health problems are likely to be intensified by major life changes, such as the changes represented by the requirements of the "Two year rule". **Special consideration should be given to the fact that the assessment results deem Mr. [REDACTED] to be at high risk for suicide. This risk would be heightened if his situation deteriorates further and his depression intensifies. For these reasons, I recommend that the "Two year rule" should be waived in this case.** (emphasis in original)

Mr. [REDACTED] and Ms. [REDACTED] prepared the above reports in response to counsel's request to evaluate the psychological effect of the two-year residency requirement on Mr. [REDACTED] Mr. [REDACTED] and Ms. [REDACTED]

have no experience treating Mr. [REDACTED]. This lack of clinical experience raises doubts about the accuracy of the evaluations. Also, in the second evaluation, Ms. [REDACTED] indicated that "[T]he MMPI-2 results were valid, yet they suggest caution with interpretations due to Mr. [REDACTED]'s apparent over-emphasis on his level of disturbance." This suggested caution raises additional concern about the accuracy of the evaluation.

The AAO notes that Mr. [REDACTED] told Ms. [REDACTED] that he would accompany the applicant to Russia, i.e. under no circumstances would he remain in the United States. Thus, the emotional strain currently experienced by Mr. [REDACTED] relates to the possible denial of the applicant's waiver application and what will happen when he accompanies her to Russia. Accordingly, the psychological evaluations do not appear to be an accurate diagnosis of Mr. [REDACTED]'s possible emotional state if he remains in the United States.

Counsel asserted that since Mr. [REDACTED] was first diagnosed with Major Depression in August 2003, he has been on a course of antidepressant medication and therapeutic sessions. The evidence in the record does not corroborate these assertions. The record contains the two psychological evaluations of Mr. [REDACTED] discussed above, but no evidence that Mr. [REDACTED] has received counseling. The record also contains a September 9, 2003 letter from Dr. [REDACTED], a physician who has treated Mr. [REDACTED] and the applicant. According to counsel, Dr. [REDACTED] diagnosed Mr. [REDACTED] as "suffering from Major Depression and Generalized Anxiety" and prescribed antidepressant medication. A review of the letter indicates that Dr. [REDACTED] made no reference to "Major Depression and Generalized Anxiety," nor does Dr. [REDACTED] state that he prescribed antidepressant medication. Dr. [REDACTED] stated that Mr. [REDACTED] would be reevaluated one month later, but the record contains no evidence of any follow up evaluation.

The record contains a May 25, 2004 letter from Dr. [REDACTED] regarding the applicant; Dr. Carbone stated that the applicant suffers from depression and takes 50 milligrams of Zoloft (an antidepressant) per day. Dr. [REDACTED] further stated "[t]he patient also admits that her husband has been treated for depression as well." Dr. [REDACTED] does not indicate that he has treated Mr. [REDACTED] for depression. The record contains no other evidence from a medical doctor related to the treatment of Mr. [REDACTED].

The record contains no evidence that Mr. [REDACTED] has received treatment for his depression, or that such treatment has been unsuccessful. Because of this lack of evidence and the questions raised above concerning the accuracy of the diagnosis of Mr. [REDACTED]'s condition, Counsel has not established that Mr. [REDACTED] will experience exceptional psychological hardship if he remains in the United States while the applicant lives in Russia for ten months.

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 Russia 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 Russia.

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.