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MAR 15 2005

[REDACTED]

FILE: [REDACTED]

Office: CALIFORNIA SERVICE CENTER Date:

IN RE: [REDACTED]

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:

[REDACTED]

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 Russia. He was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on July 25, 1994 to participate in a student-study program sponsored by Texas Tech University in Lubbock, Texas. 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, Ms. [REDACTED] a United States citizen (USC), on January 2, 2003. The applicant seeks a waiver of his two-year residence requirement in Russia, based on the claim that his wife would suffer exceptional hardship if she moved to Russia with the applicant for the two years he is required to live there.

The Director concluded that the hardships set forth by the applicant constitute the usual hardships that would normally be anticipated if Ms. [REDACTED] accompanies the applicant to Russia, or if she remains in the United States, therefore the applicant has not established that exceptional hardship would be imposed upon his spouse. The application was denied accordingly. *Decision of the Director;* California Service Center, Laguna Niguel, California, dated June 15, 2004.

On appeal, the applicant contends that the Director incorrectly stated a number of facts and that the circumstances of the case represent extreme hardship. In support of the appeal, the applicant submitted a letter and a copy of his Certificate of Eligibility for Exchange Visitor (J-1) Status (Form IAP-66). 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.)

The applicant asserted that the Director incorrectly concluded that "[A]fter September 1, 1995 the applicant was here illegally and was deportable under Section 237(a)(1)(B) of the Immigration and Nationality Act, (INA), as a person in the United States who has overstayed his visa." The applicant maintains that he followed all the requirements of United States immigration law to stay in the United States, therefore he had every reason to believe that his stay in the United States was legal at all times. The applicant's past immigration status does not affect his eligibility for a waiver to the two-year foreign residency requirement because it is not relevant to the determination of whether his wife would experience exceptional hardship if

the applicant lives in Russia for two years. The AAO will therefore not address any issues of inadmissibility in these proceedings.

The applicant contends that the Director incorrectly concluded that the applicant knew of the conditions and restrictions associated with J-1 status upon his entry because he signed the Form IAP-66. The applicant stated that he signed the form six months after his arrival in the United States; therefore, he was not aware of the two-year residency requirement upon entry. The AAO notes that the applicant's United States visa, which was issued on July 21, 1994, clearly indicated "BEARER IS SUBJECT TO SECTION 212(E)." Section 212(E) contains the waiver requirement for J-1 nonimmigrant exchange visitors. Even if the applicant did not become aware of the two-year residency requirement until December 1994 as he claims, he was aware of the requirement when he married Ms. [REDACTED]

I. Potential Hardship to Ms. [REDACTED] if She Accompanies the Applicant to Russia

The applicant contends that Ms. [REDACTED] an American citizen who has never lived outside the United States and who does not speak Russian, will live in fear if she moves to Russia. The applicant cited the March 26, 2004 United States Department of State *Consular Information Sheet on Russia*, which indicated that acts of terrorism, including bombings and hostage taking, have occurred in large Russian cities for several years. The Information Sheet further explained that violent, racially motivated attacks on people of color and foreigners have become widespread, and that it is not uncommon for foreigners to become victims of harassment, mistreatment and extortion by law enforcement and other officials. The Information Sheet urges travelers to exercise caution in areas frequented by skinhead groups and wherever large groups have gathered.

The applicant does not explain how this violence places Ms. [REDACTED] at particular risk or whether the threat exists throughout the country. The risk areas appear to be specific; the Information Sheet refers to large cities, areas frequented by skinheads, and areas where large groups have gathered. The applicant has not established that the general threat of violence will cause Ms. [REDACTED] to experience exceptional hardship.

The applicant stated that he has been a good contributor to American society and the American economy. These factors are not relevant to the determination of whether the applicant's wife will experience exceptional hardship if he returns to Russia for two years.

In his brief in support of the original waiver application, counsel asserted that Ms. [REDACTED] would be unable to find employment in Russia comparable to her current position as a software engineer. Counsel provided no evidence to support this claim. Counsel referred to the high unemployment rate, particularly for women, and to the high incidence of discrimination against women, but he does not explain how these conditions relate specifically to Ms. [REDACTED]. The applicant may not be able to find a job comparable to her current one; however, counsel has not established that the applicant would be unable to find suitable employment. Also, counsel has not shown that the applicant would be unable to support himself and Ms. [REDACTED]

Counsel also indicated that a move to Russia would interrupt Ms. [REDACTED]'s established career. Counsel has not shown that the effects of such an interruption go beyond those normally associated with living outside the United States for two years. The AAO notes that Ms. [REDACTED]'s father is the Chief Executive Officer of a software company in Massachusetts and may be able to assist Ms. [REDACTED] with finding employment when she returns to the United States.

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

In his brief in support of the original waiver application, counsel maintained that because of the applicant's six-year absence from Russia and the weak labor market there, Ms. [REDACTED] would have to partially support him. Counsel provided no evidence to support the claim that the applicant would be unable to find suitable employment in Russia. Additionally, the AAO notes that Ms. [REDACTED] currently earns \$67,000 per year. Counsel has not shown that Ms. [REDACTED] would be unable to contribute to the support of the applicant in Russia.

The original waiver application included a March 13, 2003 report on Ms. [REDACTED] from Dr. [REDACTED] a psychologist. Dr. [REDACTED] stated that Ms. [REDACTED] would face stress and emotional anxiety if the applicant lived in Russia for two years. At the time of Dr. [REDACTED]'s report, Ms. [REDACTED]'s mother was terminally ill. She passed away a few weeks later. Dr. [REDACTED] referred to the emotional stress to Ms. [REDACTED] caused by the illness of her mother, as well as to the anticipated stress to Ms. [REDACTED] when her mother died. Dr. [REDACTED] also stated that Ms. [REDACTED] would experience emotional strain because she would worry about the applicant living in a dangerous country like Russia. Dr. [REDACTED] concluded that it was essential that Ms. [REDACTED] have the continuing stable support of the applicant.

Dr. [REDACTED]'s report is based on a single meeting with Ms. [REDACTED]. This lack of clinical experience with Ms. [REDACTED] raises doubts about the accuracy of Dr. [REDACTED]'s diagnosis. Also, Dr. [REDACTED] did not indicate that Ms. [REDACTED] could not be treated for the emotional effects of a two-year separation from the applicant, nor did Dr. [REDACTED] offer any treatment plan.

III. Conclusion

The AAO finds that the applicant has not established that his wife would experience exceptional hardship if she traveled to Russia with the applicant. The AAO also finds that the applicant has not established that his wife would experience exceptional hardship if she 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.