

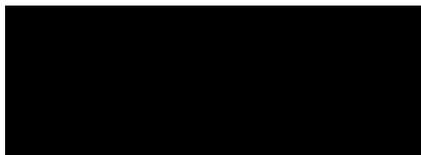
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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MAR 15 2005

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

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 21, 2002 to attend the Monterey Institute of International Studies. 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, Mr. [REDACTED]) a United States citizen (USC), on November 28, 2003 and that they have one USC child, [REDACTED] who was born on [REDACTED]. The applicant seeks a waiver of her two-year residence requirement in Azerbaijan, based on the claim that her husband and child would experience exceptional hardship if they moved to Azerbaijan with the applicant for the two years she is required to live there, or if they remained in the United States.

The Director concluded that the applicant failed to establish that her compliance with the two-year foreign residence requirement would impose an exceptional hardship to her USC spouse or child. The application was denied accordingly. *Decision of the Director*, Nebraska Service Center, Lincoln, Nebraska, dated August 12, 2004.

On appeal, the applicant contends that the two-year foreign residence requirement will create extreme hardship for her husband and child if they accompany her to Azerbaijan, or if they remain in the United States. In support of the appeal, the applicant submitted her statement and a letter from Mr. [REDACTED] employer. 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] and [REDACTED] Accompany the Applicant to Azerbaijan

First analyzed is the potential hardship Mr. [REDACTED] and [REDACTED] will experience if they relocate to Azerbaijan with the applicant for the two years she is required to live there. Mr. [REDACTED] teaches Arabic at the United States Department of Defense Language Institute, Monterey Peninsula College, and California State University at Monterey Bay. The applicant indicated that since the time that she became pregnant, Mr. [REDACTED] has unsuccessfully looked for a job in Azerbaijan, Europe, and the

Middle East. Mr. [REDACTED] stated "I have been trying hard to find a job in Azerbaijan and other countries such as Oman, United Arab Emirates, Qatar and the United Kingdom where I applied in many universities and colleges to get a job but I have been unsuccessful in my efforts." Mr. [REDACTED] does not indicate which employers he applied to, nor does he state whether he has considered positions other than with universities or colleges. The applicant has not established that Mr. [REDACTED] would be unable to find suitable employment in Azerbaijan.

The applicant contends that traveling the long distance to Azerbaijan would place [REDACTED] health at risk. The applicant provided no support for this assertion. The record contains a letter dated May 19, 2004 from Dr. [REDACTED] the applicant's doctor. Dr. [REDACTED] indicated that it was not safe for the applicant to travel at that time, i.e. while she was in the last three weeks of her pregnancy. The applicant is no longer pregnant, so the doctor's advice is moot.

Mr. [REDACTED] maintains that the demand for his skills as an Arabic instructor makes him a valuable employee at the U.S. Department of Defense Language Institute. The record contains a letter commending Mr. [REDACTED] from Hasane Bouhaja, Department Chairman at the Middle School II where Mr. [REDACTED] is a team leader. Mr. [REDACTED] value as an employee is not relevant to the determination of whether he or [REDACTED] will experience exceptional hardship if they accompany the applicant to Azerbaijan.

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

Next examined is the potential hardship to Mr. [REDACTED] and [REDACTED] if they stay in the United States during the two years the applicant is required to live in Azerbaijan. The applicant asserts that "if I go back home and leave my child with my husband, it will be extremely hard for him—he cannot take care of a three-month old baby by himself, especially while working full time." The applicant did not explain why Mr. [REDACTED] could not take care of [REDACTED] for two years, nor did she provide any evidence.

The applicant further stated:

And if I leave with the baby, it will be extremely hard for my husband to live for two years without his family. While the two of us could somehow manage the distance in spite of all the difficulties, it will be extremely hard for the baby's emotional development if we live apart.

The general effects described by the applicant are normal for such a separation; therefore, the applicant has not established that Mr. [REDACTED] or [REDACTED] will experience exceptional hardship if both of them stay in the United States, or if only Mr. [REDACTED] stays in the United States, while the applicant lives in Azerbaijan for two years. Also, the AAO notes that as United States Citizens, Mr. [REDACTED] and [REDACTED] have liberal travel rights and can visit the applicant in Azerbaijan.

III. Conclusion

The AAO finds that the evidence in the record fails to establish that the applicant's husband or child would experience exceptional hardship if they traveled to Azerbaijan with the applicant. The AAO also finds that

the evidence in the record fails to establish that the applicant's husband or child would experience exceptional hardship if they 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 her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.