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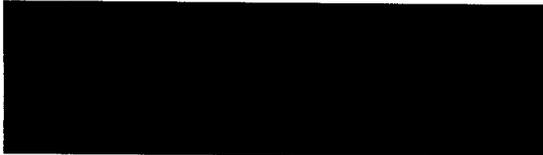
IN RE:



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, 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 Armenia. She was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on June 29, 2001 to participate in the Edmund Muskie Freedom Support Act Graduate Fellowship Program. 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 June 12, 2003. The applicant seeks a waiver of her two-year residence requirement in Armenia, based on the claim that her husband would experience exceptional hardship if he moved to Armenia 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 hardships set forth by the applicant do not constitute exceptional hardships as contemplated by Congress under Section 212(e) of the Act. The application was denied accordingly. *Decision of the Director, California Service Center, Laguna Niguel, California, dated August 24, 2004.*

On appeal, counsel contends that the adjudicator's justification for the denial completely ignores the primary and most compelling reason for the waiver request. In support of the appeal, counsel submitted a letter from the applicant and Mr. [REDACTED] requesting oral argument before the AAO; a letter from Mr. [REDACTED] medical records for the applicant; information on country conditions in Armenia; and documents related to the applicant's employment. The entire record was considered in rendering this decision.

On appeal, the applicant requests oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. USCIS has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

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 Armenia

First analyzed is the potential hardship Mr. [REDACTED] will experience if he relocates to Armenia with the applicant for the two years she is required to live there. The Director concluded that Mr. [REDACTED] would experience career "interruption or destruction" if he moved to Armenia with the applicant, and that this constituted exceptional hardship.

In making this finding, the Director did not specifically analyze the facts of the case; however, this finding will not be disturbed because the AAO concludes below that the applicant has not established that Mr. [REDACTED] will experience exceptional hardship if he remains in the United States.

II. Potential Hardship if Mr. [REDACTED] Remains 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 there. The applicant and Mr. [REDACTED] stated that the primary reason that they applied for a waiver relates to their ability to have children. Mr. [REDACTED] explained:

I stated in our application that reason number one for asking for a waiver is that "my wife's return to Armenia for two years would be an exceptional hardship for me because at my advanced age, 53, and my wife's age, 37, **such a separation would endanger my chances of becoming a father for the first time.**" The point is that a two-year separation could prevent me from *ever* having a child. (emphasis in original)

Mr. [REDACTED] indicated that the applicant is taking the fertility drug Clomid. A variety of the applicant's medical documents are in the record. Neither counsel nor the applicant offered any description or analysis of these documents. The only reference to the documents is in Mr. [REDACTED] statement, where he quoted the applicant's gynecologist as stating that the applicant would be less fertile if she waited two years to try to conceive. The fact that the separation may decrease the chance of the applicant getting pregnant does not establish exceptional hardship to Mr. [REDACTED]. Also, the AAO notes that as a USC, Mr. [REDACTED] has liberal travel rights and can visit the applicant in Armenia, which would allow them to continue to try to have children.

Both the applicant and Mr. [REDACTED] indicated that the applicant has "medical complications," but they do not explain what these complications are, how they relate to the applicant's ability to have children, or why they would cause Mr. [REDACTED] to experience hardship if the applicant lives in Armenia for two years.

Counsel contends that the lack of quality medical care in Armenia will make it difficult for the applicant and Mr. [REDACTED] to have a healthy child. Counsel submitted documents concerning health conditions and medical care in Armenia. The documents contain many references to the infant mortality rate in Armenia. Given that the applicant is not pregnant, counsel does not explain how these conditions in Armenia relate to the hardship that Mr. [REDACTED] will experience if the applicant lived in Armenia for two years. Also, the fact that healthcare standards in Armenia are lower than in the United States does not establish exceptional hardship.

The applicant stated that she did not originally intend to stay in the United States, but her intentions changed after she met her husband. The applicant's intentions are not relevant to the determination of whether her husband would experience exceptional hardship if she returns to Armenia for two years.

The AAO notes that the Applicant's visa, which was issued on June 19, 2001, clearly indicated that the applicant was subject to the 212(e) two-year residency requirement. Knowing of the two-year residence requirement, the applicant and Mr. [REDACTED] chose to get married and to try to have children.

Counsel contends that it would be impossible for Mr. [REDACTED] to maintain two households while the applicant is in Armenia. Counsel offered no evidence to support the claim that Mr. [REDACTED] would have to support two households, or that his income would be insufficient. The record indicates that Mr. [REDACTED] earned \$100,000 in 2003. Counsel does not explain why this salary would be inadequate, or why the applicant could not find employment in Armenia and contribute to supporting herself.

Mr. [REDACTED] maintains that the applicant is satisfying the spirit and intent of the two-year residency requirement because she works as the California correspondent for an Armenian public television station. As a J-1 Nonimmigrant Exchange Visitor who is subject to the two-year foreign residency requirement, the applicant is required to live in Armenia for two years. Working in the United States for Armenian Public Television does not satisfy this requirement.

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 Armenia 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 Armenia.

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.