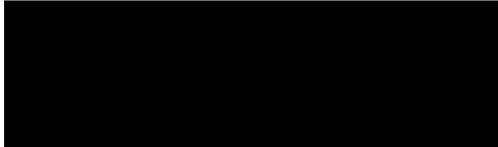




U.S. Citizenship
and Immigration
Services

identifying [redacted] listed to
prevent clear, unwarranted
invasion of personal privacy

PUBLIC COPY



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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: **OCT 17 2005**

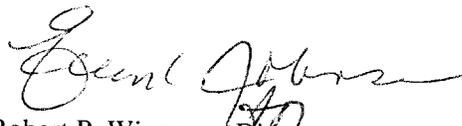
IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of the Foreign Residence Requirement of 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 The director's decision will be withdrawn and the appeal will be dismissed as moot.

The record reflects that the applicant is a native of China. The applicant was admitted into the United States as a J2 spouse of a J1 nonimmigrant exchange visitor on November 4, 2000. The applicant and her husband were divorced on August 8, 2001, at which time the applicant lost her J2 status. The record reflects that the applicant's ex-husband, [REDACTED] remarried in the U.S. on August 12, 2001. He obtained a waiver of his two-year foreign residence requirement around November 2001. The applicant remarried in the U.S. on November 9, 2002. She presently has an adjustment of status application pending through her spouse.¹

The director determined that the applicant was subject to the two-year foreign residence requirement set forth in section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e), and that she had failed to establish she qualified for a waiver. The applicant's Form I-612, Application for Waiver of the Foreign Residence Requirement (I-612 application) was denied accordingly.

On appeal, counsel asserts that the applicant is not subject to the two-year foreign residence requirement set forth in section 212(e) of the Act. Alternatively, counsel asserts that the applicant is entitled to a waiver of the section 212(e) two-year foreign residence requirement because she has established she would be persecuted by the Chinese government on account of her [REDACTED] religious beliefs.

Section 101(a)(15)(J) of the Act, 8 U.S.C. § 1101(a)(15)(J) states:

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j), *and the alien spouse* and minor children of any such alien if accompanying him or following to join him. (Emphasis added).

The applicant was admitted into the United States on November 4, 2000 as the J2 non-immigrant spouse of a J1 participant in a "program to provide courses of study, teaching, lecturing, research, or a combination

¹ The AAO notes that the applicant filed an asylum application with the Immigration and Naturalization Service (Service, now, U.S. Citizenship and Immigration Services, CIS) in January 2001. The application was denied and the applicant was placed into removal proceedings on June 7, 2001. The applicant's removal hearing is presently scheduled for October 6, 2005.

thereof, in the various fields of instruction and research conducted by the university for qualified foreign students, professors, and specialists, to promote the general interest of international exchange.” The applicant therefore clearly falls within the nonimmigrant definition contained in section 101(a)(15)(J) of the Act.

Section 212(e) of the Act describes who is required to comply with the two-year foreign residence requirement and under what conditions a waiver of the two-year foreign residence requirement can be obtained.

Specifically, section 212(e) of the Act states that:

(e) 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 a 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 Immigration and Naturalization [now, 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