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U.S. Citizenship
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Services

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H3

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: **OCT 27 2005**

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, 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 and citizen of Poland. She was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on February 27, 2003 to receive training sponsored by the Council on International Educational Exchange. 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], a United States citizen (USC), on June 26, 2004. The applicant seeks a waiver of her two-year residence requirement in Poland, based on the claim that her husband would suffer exceptional hardship if he moved to Poland 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 hardships. The I-612 Application for Waiver of the Foreign Residence Requirement was denied accordingly. *Decision of the Director*, Nebraska Service Center, dated November 24, 2004.

On appeal, the applicant contends that:

- 1) She has received a "No Objection" statement from the Polish Embassy in Washington;
- 2) She may not be subject to the two-year foreign residence requirement;
- 3) Her husband suffers from depression and his condition will deteriorate if she moves to Poland.

In support of the appeal, the applicant submitted a statement. In support of the original waiver application, counsel submitted letters from the applicant and her husband; a diploma that the applicant received in Poland; financial documents; and a "no objection" letter from the Polish Embassy in Washington. The entire record was considered in rendering this decision.

At the outset, the AAO notes that the record contains a letter dated December 10, 2004 from the Polish Embassy in Washington that indicates that the Government of the Republic of Poland has no objection to the United States Government waiving the two-year foreign residence requirement for the applicant. The record contains no evidence that the United States Department of State Waiver Review Division has received and considered this letter. Accordingly, the letter is not relevant to the adjudication of the applicant's appeal.

The AAO also notes that the applicant asserts that she may not be subject to the two-year foreign residence requirement. In support of this assertion, the applicant stated that her program was not sponsored by the Polish or American government, that she paid the costs, that the skills she obtained through the program are not listed on the State Department Skills List for Poland, and that the two DS-2019 forms that she received provided contradictory information concerning whether the applicant was subject to the foreign residence requirement. The evidence in the record establishes that the applicant is subject to the two-year foreign residence requirement. First, the applicant's most recent United States Visa, which was issued by the United States Department of State, has the following annotation: "BEARER IS SUBJECT TO SECTION 212(E) TWO YEAR RULE DOES APPLY. (POLAND)" Second, the back of the applicant's I-94 includes the notation 212(E), indicating that the applicant is subject to the provisions of section 212(e) of the INA, which

contains the foreign-residence requirement. Third, the applicant provided no proof to establish that she is not subject to the foreign residence requirement.

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(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.

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 [REDACTED] Accompanies the Applicant to Poland

First analyzed is the potential hardship [REDACTED] will experience if he relocates to Poland with the applicant for the two years she is required to live there. In her statement in support of the appeal, the applicant stated:

My U.S. citizen spouse suffers from depression and my departure would deteriorate his condition. I am also afraid that if he decided to follow me to Poland, he would not have equal access to treatment as he has had it in the United States.

In her letter in support of the original waiver application, the applicant provided additional details concerning her husband’s psychological state:

In the past my husband faced several depression problems. He can not live in the area with very few sunny days and cold weather. That is exactly the description of the climate in Poland. For the most part of the year days are very cloudy, with low temperatures, rain and snowfalls. The weather was one of the reasons we decided to settle down in southwestern Utah. My husband’s mental and emotional state worsens when he remains unemployed, which I am afraid might be the case if we are forced to go to Poland. His depression gets unbearable when he loses relationships (close friends, significant other, loved ones, family members), up to the stage where he has to have professional medical care and be on the prescribed anti-depressants.

[REDACTED] stated that he has been treated for clinical depression and that it runs in his family. [REDACTED] indicated that if he moves to Poland with his wife, his depression could worsen because of the climate, his lack of familiarity with Polish culture, his inability to speak Polish, the difficulty he would have finding a job, and the fact that he would be separated from his family in the United States. [REDACTED] also indicated

that he has bills (student loan, credit card) in the United States that he would not be able to pay if he lived in Poland.

The applicant has not established that her husband will experience exceptional hardship if he accompanies her to Poland for two years. First, the applicant presented no evidence indicating that her husband's depression cannot be treated in Poland. The record indicates that [REDACTED] depression has been successfully treated in the past. Second, the applicant has not shown that she or her husband would be unable to find suitable employment in Poland. The fact that the applicant earned a master's degree in Poland will presumably assist her in finding employment. Third, while [REDACTED] would experience hardship because of being separated from his family in the United States, the applicant has not shown that this hardship goes beyond what is normally expected from a two-year separation. Fourth, the applicant provided no evidence that she and her husband would be unable to pay her husband's bills in the United States.

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

Next examined is the potential hardship to [REDACTED] if he stays in the United States during the two years the applicant is required to live in Poland. The applicant maintains that her husband's depression will worsen if he remains in the United States. [REDACTED] stated that if he is separated from his wife, he will be devastated. The applicant provided no evidence concerning her husband's depression. The record indicates that the [REDACTED] depression has been successfully treated in the past. The AAO notes that [REDACTED] has family members in the United States who can provide emotional support. Also, no evidence was provided to show why [REDACTED] could not visit the applicant in Poland.

The situation described by the applicant is the normal effect of a two-year separation of spouses. Accordingly, it does not constitute exceptional hardship.

III. Conclusion

The AAO finds that the evidence in the record fails to establish that the applicant's husband would experience exceptional hardship if he traveled to Poland 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 Poland.

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.