U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT 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, Vermont 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 Canada. She was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on June 25, 1986 to receive postgraduate medical training at Jersey City Medical Center. 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) and physician, on June 1, 1999. The applicant and her husband have a daughter, Christina, who was born in the United States on November 14, 1999. The applicant seeks a waiver of her two-year residence requirement in Canada, based on the claim that her husband and daughter would suffer exceptional hardship if they moved to Canada 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 evidence submitted by the applicant failed to establish that her departure from the United States would impose exceptional hardship upon her United States citizen spouse or child as required by section 212(e) of the Act. The I-612 Application for Waiver of the Foreign Residence Requirement was denied accordingly. *Decision of the Director*, Vermont Service Center, dated December 22, 2004.

On appeal, counsel contends that under the facts present in this case, exceptional hardship to the applicant's United States citizen spouse has been established. Counsel did not submit a brief or any other new materials in support of the appeal. In support of the original waiver application, counsel submitted an affidavit from the applicant; a letter verifying [redacted] employment; and letters from various organizations in Canada regarding whether the applicant can practice medicine in Canada. 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 [redacted] Accompany the Applicant to Canada

First analyzed is the potential hardship [redacted] will experience if they relocate to Canada with the applicant for the two years she is required to live there. The applicant asserts that she would be

unable to practice medicine in Canada, and that this would have an adverse effect on her husband and daughter. Counsel submitted letters from various organizations in Canada addressing whether the applicant can practice medicine there. These letters do not establish that the applicant would be unable to practice medicine in Canada. First, while the letters describe the process required for practicing medicine in Canada, they do not state that it would be impossible for the applicant to work as a doctor in Canada. Most of the letters describe alternative methods for becoming registered to practice medicine. For example, the letter from the College of Physicians and Surgeons of Manitoba stated:

> Possession of a higher qualification or eligibility to sit the Royal College of Physicians & Surgeons of Canada certification examinations may be acceptable in lieu of a rotating internship.
>
> You will also note that if you were to obtain certification in a specialty from the Royal College of Physicians and Surgeons of Canada, you would be eligible for registration on that basis.

The applicant does not address any of these possibilities. Second, the AAO notes that the letters submitted by the applicant are all from 1991. The applicant has now been practicing medicine for an additional 14 years in the United States. This additional experience will presumably help her in working as a physician in Canada. Third, the applicant's statements contradict the purpose of the J-1 Visitor Exchange Program, which allows doctors to receive graduate medical training in the United States, in exchange for which they return to their countries to practice medicine as a doctor. Under the terms of her J-1 visa, the applicant is expected to return to Canada to practice medicine so that her fellow Canadian citizens can benefit from her training and experience in the United States. It would seem logical that the applicant gave consideration to possible employment opportunities upon return to Canada when she applied for the J-1 visa.

The applicant contends that her husband would be unable to practice medicine in Canada because the country places severe restrictions on foreign physicians. The applicant submitted no evidence to support this contention. As noted above, all of the letters she submitted were from 1991 and were addressed specifically to her, so they do not refer to requirements for foreign doctors. [redacted] is an experienced Neonatologist, and the record contains no evidence indicating that he has attempted to find a medical position in Canada. Also, the AAO notes that [redacted] is married to a Canadian citizen, but the applicant does not address what rights her husband may have in Canada.

The applicant maintains that if [redacted] accompanies her to Canada, "he will lose a very lucrative position that he has worked for years to achieve." [redacted] has worked as a Neonatologist with the Pediatric Medical Group at Capital Health System since 1996. The applicant submitted no evidence establishing that Dr. ~~Banzon~~ would lose his current position. Even if [redacted] does lose his current position, the applicant has not established that [redacted] would be unable to obtain suitable employment as a physician upon his return to the United States.

In regard to her daughter, the applicant stated:

> Given the fact that my husband's returning to Canada is not an option our daughter would either have to return to Canada with me or remain in the United States with my husband. This would in effect cause my daughter to be without one if [sic] her parents present for much

> of the time during the next two years. This would have a severe emotional and psychological effect upon our child.

As discussed above, the applicant has not established that her husband would experience exceptional hardship if he lived with the applicant in Canada for two years. Accordingly, if remains in the United States, it is by choice, i.e. the family does not have to be separated.

II. Potential Hardship if Remain in the United States

Next examined is the potential hardship to if they stay in the United States during the two years the applicant is required to live in Canada. The applicant stated:

> If were to remain in the United States with Felipe it would be extremely difficult for him to raise without her mother present. My husband works long hours and in many instances he can [sic] or called into work at a moment's notice. Such a situation would make it impractical for him to raise alone.

The situation described by the applicant does not constitute exceptional hardship. The separation will cause some hardship, but no evidence was provided to show that other options such as hiring a nanny were explored to assist Also, no evidence was presented to show why could not visit the applicant in Canada.

The applicant stated that living apart from her husband would cause him emotional distress. The distress described by the applicant is to be expected from a two-year separation; however, 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 and daughter would experience exceptional hardship if they traveled to Canada with the applicant. The AAO also finds that the evidence in the record fails to establish that the applicant's husband and daughter would experience exceptional hardship if they remained in the United States while the applicant returned temporarily to Canada.

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.