



U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **SEP 22 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 Venezuela. He was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on June 30, 1994 to receive graduate medical education and training. 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] United States citizen (USC), on February 14, 1999. The applicant seeks a waiver of his two-year residence requirement in Venezuela, based on the claim that his wife would experience exceptional hardship if she moved to Venezuela with the applicant for the two years he is required to live there, or if she remained in the United States.

The director concluded that the evidence submitted failed to establish that the applicant's departure from the United States would impose exceptional hardship upon his spouse and denied the I-612 Application for Waiver of the Foreign Residence Requirement accordingly. *Decision of the Director*, Vermont Service Center, dated August 16, 2004. Counsel appealed the director's decision. Because the appeal was filed later than 33 days after the date of decision, the director considered counsel's appeal as a motion to reopen/reconsider. The director denied the motion and affirmed the denial. *Decision of the Director*, Vermont Service Center, dated January 12, 2005.

On appeal, counsel contends that the director's decision failed to consider the evidence submitted, showed a total lack of human empathy, and ignored the law. In support of the appeal, counsel submitted a brief. In support of the original waiver application, counsel submitted a brief; an affidavit from the applicant; an affidavit from [REDACTED] an affidavit from Dr. [REDACTED] a psychologist; documents describing the medical condition of [REDACTED] mother; financial records; information on country conditions in Venezuela; a Board of Immigration Appeals case; and various other documents. 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 to [REDACTED] if She Accompanies the Applicant to Venezuela for Two Years

First analyzed is the potential hardship [REDACTED] will experience if she lives with the applicant in Venezuela for two years. [REDACTED]'s mother, [REDACTED] aged 56, suffers from systemic lupus erythematosus (SLE), a chronic and potentially fatal autoimmune disease. [REDACTED] has experienced problems with cerebritis, a brain inflammation that causes lupus psychosis, a severe mental disorder characterized by derangement of personality and loss of contact with reality. [REDACTED] lives in Cumming, Georgia, but has sometimes received specialized medical care in Boston, which is close to where [REDACTED] lives. Both [REDACTED] SLE specialist and psychiatrist stated that [REDACTED] is dependent on [REDACTED] who has no siblings, for emotional support. [REDACTED] stated that she would be in great mental anguish if she had to live in Venezuela, where she would be unable to see to her mother's medical and emotional needs.

[REDACTED] does not speak Spanish, which would make it difficult for her to adjust to living in Venezuela, including her ability to find suitable employment. Also, the *United States Department of State Consular Information Sheet on Venezuela* submitted by counsel indicated that anti-American sentiment is continuous.

The AAO finds that the combination of factors discussed above would cause [REDACTED] to experience exceptional hardship if she lived in Venezuela for two years.

II. Potential Hardship if [REDACTED] Remains in the United States While the Applicant Lives in Venezuela for Two Years

Next examined is the potential hardship to [REDACTED] if she stays in the United States during the two years the applicant is required to live in Venezuela. As a United States citizen, [REDACTED] is not required to accompany the applicant to Venezuela. In a March 1, 2004 supplemental affidavit submitted in response to the director's Notice of Action, [REDACTED] stated:

Why can't I just stay here while my husband leaves for two years? Let me begin with the fact that I am emotionally exhausted to the point where I think I will break without the daily close support of my husband. I have been so absorbed with my mother's medical condition that I have not been able to effectively deal with the trauma generated by the events that took place on September 11, 2001. After talking to my therapist, I think I have not truly understood how emotionally exhausted I have been for the last two and one-half years. Her report, which is attached, correctly indicates the close connection I had with many aboard United Airlines Flight 175 which crashed on September 11, 2001. I lost so many close friends and colleagues—and I myself was working flight 175 as my regularly scheduled trip that month (I am attaching documents that reflect my per diem in September 11, 2001 which corroborates my statement). I realized that I rarely talk about my emotions to anyone but my husband—he has been a rock in my efforts to find normality after that day. He has supported and continues to support me daily with this difficult situation. I am afraid that being away from him will be an overwhelming setback for me emotionally. Can you understand that I simply cannot bear the thought of my husband leaving me right now, or ever?

In an affidavit dated February 22, 2004, Dr. [REDACTED] a psychologist, diagnosed [REDACTED] as suffering from Post-Traumatic Stress Disorder (PTSD) caused by the deaths of her colleagues and friends on United Flight 175 on September 11, 2001. Dr. [REDACTED] stated:

I first evaluated [REDACTED] and his wife, Mrs. [REDACTED] on February 5, 2004. I last met with them on February 19.

Based on my assessment of this couple, it is my professional opinion that [REDACTED] has been suffering from Post-Traumatic Stress Disorder for the past two and a half years, with accompanying episodes of depression.

This finding, in conjunction with several other significant factors, lead to my professional conclusion that compliance with the two-year residency requirement of Section 212 (e) of the Immigration and Nationality Act for her physician husband would impose an extreme and exceptional hardship upon his wife, a U.S. citizen.

Furthermore, it is clear that a denial of the waiver would greatly aggravate her diagnosis of Post-Traumatic Stress Disorder and place her at great risk of a developing a more significant depressive disorder.

Dr. [REDACTED] indicated that she first "evaluated" Dr. and Ms. [REDACTED] on February 5, 2004 and last "met with them" on February 19, 2004. Dr. Alvarez does not specify the frequency or duration of her meetings with Ms. [REDACTED] nor does Dr. [REDACTED] describe the substance of the meetings. In other words, Dr. [REDACTED] does not explain what her "assessment of this couple" is based on. The record indicates that Dr. [REDACTED] formulated her diagnosis of [REDACTED] after an unspecified number of meetings that occurred during a two-week period; there is no evidence indicating that [REDACTED] and [REDACTED] met at any other time. The lack of a long-term, ongoing therapeutic relationship raises questions about Dr. Alvarez's ability diagnose the applicant's psychological condition. Dr. Alvarez provided a multifaceted description of PTSD symptoms without explaining how she formulated her diagnosis or how each individual symptom related to [REDACTED]

Dr. Alvarez concluded:

The option of letting her husband move alone to Venezuela and visit periodically would also be extremely stressful and overwhelming. She needs his continued support to overcome her PTSD and depression and having him far away and in an unsafe environment would surely be very painful and extremely difficult. If her own emotional health were better and if her mother were not so ill and dependent on her, perhaps [REDACTED] could manage an extended separation from her husband, with significant but not overwhelming hardship. However, given her own psychological and emotional problems post 9/11 and her mother's marked deterioration, disability and emotional dependence on her, I am seriously concerned about the exceptional and extreme hardship and psychological deterioration that denial of the waiver would cause [REDACTED]

In spite of diagnosing [REDACTED] with PTSD and depression, both of which are serious but treatable conditions, Dr. [REDACTED] did not specify a treatment plan, indicate that she treated the applicant, or state that she referred the applicant elsewhere for further care. Dr. Alvarez predicted what would happen to [REDACTED] if she is separated from the applicant for two years but did not discuss treatment options or indicate that effective treatment was unavailable. The record contains no other documents prepared by medical or mental health professionals regarding the psychological condition or treatment of the applicant. The fact that [REDACTED]

has not sought treatment after being diagnosed with PTSD and depression raises questions about the seriousness of her condition.

The AAO notes that the original waiver application and supporting documents, which were submitted in August 2003, make no reference to experiencing emotional distress caused by 9/11. went to Dr. A after the director issued a Notice of Action in December 2003. While it is understandable that Ms. would not be able to specifically label her psychological condition(s) until consulting a mental health care professional, the record indicates that has always confided her feelings to the applicant. Given the traumatic events of 9/11 and the presumed conversations that and her husband had concerning position as a flight attendant, it is unclear why neither the applicant nor made any reference in the waiver application or supporting documents to strong feelings related to 9/11, which are clearly relevant to a determination of whether she would experience exceptional hardship if her husband moved to Venezuela.

stated that she would be unable to take care of her mother without the emotional support of her husband:

As I said in my last Affidavit, my mother's health is in disarray. I am attaching updated medical records indicating that she has recently been diagnosed with Retinitis Pigmentosa, a progressive retina disease that produces blindness. As the only child, I am the main source of emotional support for my mother and I need to be there for her everyday. The stress is more than I can handle now, and I am not exaggerating to say that if I have to face this without my husband, or if I have to face this from Venezuela while "visiting" my husband, the stress will be too extreme for me.

s statement does not establish that she will experience exceptional hardship if she has to take care of her mother without the applicant for two years. First, on December 30, 2003, Dr. Enrique Garcia, an ophthalmologist, diagnosed with Retinitis Pigmentosa. Dr. Garcia indicated that has complained of narrowed visual fields in both eyes for the past eight or nine years, but that the visual field was recently stable. This diagnosis does not appear to indicate a worsening of s condition. Also, Dr. did not state that the condition will result in blindness. Second, the physicians who prepared letters regarding medical condition emphasized the important role that plays in her mother's health, but none of the doctors stated that would be unable to cope with the care of her mother if the applicant moves to Venezuela for two years. Third, the psychiatrist who treated indicated in a May 8, 2003 letter that her condition was relatively stable. Fourth, the AAO notes the applicant and live in Cambridge, Massachusetts, and that nt lives in Cumming, Georgia. Cumming and Cambridge are approximately 1200 miles apart. It may be possible for or Acosta to relocate for two years, which would put in closer proximity to her mother, presumably lowering s stress level. Fifth, counsel has not established that would be unable to receive effective treatment for the psychological effects of a two-year separation from her husband.

Counsel asserts that *Matter of Kawasaki*, 12 I&N Dec. 864 (BIA 1968) is exactly on point. In *Kawasaki*, the applicant's mother-in-law suffered from an incurable cancer that would cause progressive disability. As a result of the cancer, the mother-in-law developed a severe depression requiring psychiatric treatment. Both the psychiatrist and the cancer specialist certified that the mother-in-law was quite dependent on the applicant's wife, a United States citizen, for emotional support. The BIA concluded:

It is clear that a separation of mother and daughter at this stage of the mother's illness can only add to their already great mental anguish. It would be unreasonable to expect Mrs. to accompany her husband abroad and deprive her mother of the care only she can provide. Also, to require Dr. Kawasaki to depart the United States and leave his wife behind

to go through this trying period alone is equally unreasonable.

Kawasaki can be distinguished from the instant case. First, [REDACTED] does not suffer from an incurable cancer that will lead to progressive disability. Second, the BIA offered no factual or legal analysis to support their conclusion that it would be "equally unreasonable" to require Dr. Kawasaki to depart the United States and leave his wife behind. The facts described by the BIA related to the close relationship between mother and daughter and the effect of separating them, not to the effect of separating the daughter from the applicant. In other words, after emphasizing how dependent the mother was on the daughter, the BIA summarily concluded that the daughter would experience the same level of hardship if she remained in the United States with her mother while her husband returned to Canada for two years. Third, waiver applications are adjudicated on a case-by-case basis. The AAO reviews appeals de novo and decides cases based on a review of the entire record.

Living apart from the applicant for two years will cause [REDACTED] experience hardship, however, counsel has not established that the hardship would be exceptional.

III. Conclusion

The AAO finds that the evidence in the record establishes that the applicant's wife would experience exceptional hardship if she lived in Venezuela for two years with the applicant. The AAO also finds that the evidence in the record fails to establish that the applicant's wife would experience exceptional hardship if she remained in the United States while the applicant returned temporarily to Venezuela.

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.