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U.S. Citizenship  
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Services

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[REDACTED]

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: AUG 15 2006

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the waiver application. It is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a citizen of Russia who 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 applicant was admitted to the United States as a J-1 non-immigrant exchange visitor participating in the Youth for Understanding Program at New York, NY on August 15, 1995. After completion of the program, she returned to Russia for 15 months. She then returned to the United States in F-1 status, and later changed status to H-1B. She is subject to completion of the two-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). She married a United States citizen on January 28, 2002. The applicant is seeking a waiver so that she may remain in the United States with her husband.

The director found that the applicant did not establish exceptional hardship to her husband whether he remained in the United States or joined her for the remaining nine months in Russia. *Decision of the Center Director, October 6, 2005.*

On appeal, counsel states that consideration of all the factors in the applicant's case would result in a finding of exceptional hardship to the applicant's husband if the applicant is required to return to Russia for nine months.

The entire record was considered in reaching this decision.

Section 212(e) of the Act states in pertinent part:

(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, [s]hall 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 of the Commissioner [now Director] of Immigration and Naturalization [now United States Citizenship and Immigration Services, USCIS] 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. . . 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.

Adjudication of the waiver request requires consideration of whether the applicant's husband or child faces exceptional hardship in both Russia and the United States if the applicant fulfills his two-year residence requirement.

[I]t must first be determined whether or not such hardship would occur as the consequence of [the applicant's spouse] accompanying [the applicant] abroad, which would be the normal course of action to avoid separation. The mere election by the spouse to remain in the United States, absent such determination, is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed. Further, even 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), supra." *Matter of Mansour*, 11 I. & N. Dec. 306 (BIA 1965).

The applicant, through counsel, contends that her husband's professional position would make her a target of criminal activity in Russia, that mistakes made by the then Immigration and Naturalization Service led her to believe that the residence requirement no longer applied to her, that the decision of the director is based on the erroneous assumption that [REDACTED] married in order to "create hardship," and that [REDACTED] would suffer irreparable and unusual damage to his career if he were to relocate to Russia for nine months. *Brief in Support of I-290B Application*, November 29, 2005.

The applicant's husband is a Senior Vice President of WPS Health Insurance, a healthcare insurer for military personnel around the world. He has access to information that the Department of Defense has classified as sensitive. Counsel contends that the applicant's husband's access to security information puts the applicant at considerable risk in Russia. As indicated above, the statute requires that, to establish eligibility for a waiver

of the residence requirement, the applicant must demonstrate that her fulfillment of the residence requirement would impose exceptional hardship upon her spouse or that she cannot return to the country of her nationality or last residence because she would be subject to persecution on account of race, religion, or political opinion. While the applicant has demonstrated, through submission of general country conditions information, that criminal elements, Chechen revolutionaries and corrupt government officials all contribute to make Russia a dangerous place, she has not demonstrated with any specificity that she would be the target of persecution. Her husband has access to sensitive information, however there has been no showing that anybody in Russia knows that he has such access or that anybody or group would be interested in the information that he has access to. The applicant has not demonstrated that any individual or group has or would target her because of her husband's position and she has not demonstrated that, as the wife of her husband, she possesses any characteristic connected to race, religion or political opinion that would cause anyone or any group in Russia to seek her out to do her harm. Therefore, the applicant has not demonstrated that she cannot return to her country because she would be subject to persecution on account of race, religion or political opinion.

Counsel also contends that her husband, because of the information that he has access to, would be a target if he joined his wife in Russia and would be so worried about her safety if he did not join her that the worry would also constitute exceptional hardship. As stated above, there is no evidence to indicate that anybody in Russia is interested in the information that her husband has access to, and no evidence to indicate that anybody in Russia knows what sort of information her husband has access to. Speculation that some criminal elements in Russia might be interested in the information possessed by the applicant's husband, without indication that those criminal elements know that the applicant's husband possesses such information, is an insufficient basis for an extreme hardship finding.

Counsel also contends that the applicant was not aware of the two-year residence requirement because the Immigration and Naturalization Service (INS) erred in granting her H-1B status before her residence requirement was fulfilled. The applicant received notice of the residence requirement when she was approved for J-1 status. She never received notice that the requirement had been waived or was terminated. There is no evidence that anybody in the legacy INS or USCIS ever informed her that the requirement no longer existed. It does not appear that she ever discussed with an appropriate official whether the requirement still existed. The fact that the applicant applied for a status that she was ineligible for, and was granted that status, in error, does not change the fact that, by law, she is required to fulfill the remainder of the two-year residence requirement.

The denial of the applicant's application for waiver does not rest on any belief that she entered into marriage with her husband to avoid her responsibility to fulfill her residence requirement. We do not find that the director based his decision on such a belief. However, it is appropriate to note that the applicant entered into marriage already having reasonable notice that she would need to complete two years residence in Russia. The AAO will not engage in speculation as to whether she understood that requirement or explained it to her husband.

Counsel also contends that the applicant's husband would suffer irreparable damage if he were to join her in Russia while she fulfills the remainder of her residence obligation. It is not clear that the contention is accurate, or even that losing his current job would result in exceptional hardship. The record does not include

specific evidence about the financial status of the applicant's husband beyond general statements that he is wealthy. It is not clear whether the applicant has sufficient wealth to absorb a period of unemployment or underemployment. There is no information regarding what the applicant's job prospects would be if he returned to the United States after nine months. Many corporations absorb absences of executives for longer periods for reasons such as illness. His skills and previous record of security clearances might make him attractive to another employer.

The applicant's husband is not required to join her in Russia. While he might be worried about her welfare and be lonely in her absence, the record does not indicate that being separate from her for that period would constitute exceptional hardship. He apparently has sufficient resources to visit her and to contact her by telephone or e.mail during the period of separation. There has been no showing that he would be so devastated and worried that he would be unable to function either at work or at home during her absence.

In determining the merits of an application for a waiver of the foreign residence requirement, we must consider the Congressional intent of the statute . . . the Subcommittee reiterates and stresses the fundamental significance of a most diligent and stringent enforcement of the foreign residence requirement. The report states, "[i]t is believed to be 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 this country would cause personal hardship." *Matter of Bridges*, 11 I. & N. Dec. 506 (BIA 1965).

The AAO finds that the evidence contained in the record fails to establish that the applicant's husband would suffer hardship beyond that normally suffered by a husband temporarily separated from his wife. The evidence does not demonstrate that such separation amounts to exceptional hardship.

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.