

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H3

FILE:

Office: VERMONT SERVICE CENTER

Date: JAN 10 2006

IN RE:

APPLICATION:

Application for Waiver 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:

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 citizen of India 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 in J1 nonimmigrant exchange status on July 13, 2000. The applicant's spouse is a U.S. citizen and he presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to his spouse.

The director determined that the applicant failed to establish his spouse would experience exceptional hardship if he fulfilled his two-year foreign residence requirement in India. *Director's Decision*, dated May 13, 2005. The application was denied accordingly.

On appeal, counsel asserts that the evidence demonstrates that the applicant's spouse would suffer exceptional hardship as a result of career interruption if she relocated to India and would suffer exceptional emotional and financial hardship if she remained in the United States. *Brief in Support of Appeal*, at 1, undated.

The record includes, but is not limited to, counsel's brief, stem cell research articles, a stem cell training course agenda and letters regarding the emotional, professional, cultural and religious effects of not granting the waiver. The entire record was considered in rendering this decision.

Section 212(e) of the Act states in pertinent part 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 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, "Therefore, it must first be determined whether or not such hardship would occur as the consequence of her accompanying him 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."

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).

Counsel asserts that the district director misconstrues the holding in *Matter of Mansour* and that the fact pattern of *Matter of Mansour* is similar to the case at hand. *Brief in Support of Appeal*, at 7. The AAO notes that *Matter of Mansour* involved a situation where the U.S. citizen would face economic hardship, recently lost a child at birth due to anencephaly and would face relocation to a country which restricts departure of its

foreign nationals. The facts of the case at hand, which are discussed below, are quite different than those in *Matter of Mansour*.

The first step required to obtain a waiver is to show that the applicant's spouse would experience exceptional hardship if she moved to India for two years. Counsel states that the applicant's spouse is an integral part of the stem cell research group at the Pittsburgh Development Center and is involved in work of national and international importance. *Brief in Support of Appeal*, at 2-3. The record includes a letter from the center director which emphasizes her unique attributes and the import role that the applicant's spouse holds at the center. *Letter from Gerald Schatten, Ph.D.*, dated November 8, 2004. The record includes other letters from prominent researchers who emphasize her innovative and important research studies. The AAO notes that the statute requires a demonstration of exceptional hardship specifically to the applicant's spouse and does not include language permitting the granting of a waiver based on national interest.

Counsel states that if the applicant's spouse relocates to India, she would be unable to continue her work in stem cell research and this would be career threatening as her knowledge and skills will be obsolete in two years. *Brief in Support of Appeal*, at 4. The record includes a letter from a research associate which states that embryonic stem cell research, of the kind approved by the U.S. government, is non-existent in India. *Letter from Meena Sukhwani, Ph.D.*, dated February 9, 2005. However, this statement is not supported by any substantiating documentation. Furthermore, there is evidence that stem cell research is currently flourishing in India with many prominent Indian institutions working on stem cell projects. Indrajit Basu, *India Embraces Stem Cell Research*, [http://www.atimes.com/atimes/South\\_Asia/GL02Df02.html](http://www.atimes.com/atimes/South_Asia/GL02Df02.html) (December 2, 2005). Therefore, the applicant's spouse may be able to continue the same or similar research in India and she would seemingly be in demand based on her experience. The AAO also notes that the inability of the applicant's spouse to continue identical research in India or upon her return to the United States is not grounds for a finding of exceptional hardship as relocation to a foreign country for two years involves inherent problems such as the loss of career opportunities. In the event that she cannot continue identical research in India or upon return to the United States, the applicant's spouse can still pursue other research opportunities in her field of biology. Based on the evidence contained in the record, the AAO finds that the applicant has failed to establish that his spouse would suffer exceptional hardship if she moved with him to India.

The second step required to obtain a waiver is to establish that the applicant's spouse would suffer exceptional hardship if she remained in the United States during the two-year period. Counsel states that the applicant's spouse cannot remain in the United States for financial, personal, religious and cultural reasons. The AAO notes that no substantiating evidence of financial hardship has been presented. The record includes letters from physicians stating that the applicant's spouse would suffer emotional distress if she remained in the United States. Although unfortunate, this is a common result of separation and there is no indication that the applicant's spouse's stress would be exceptional compared to others in the same situation. Counsel also contends that separation is discouraged, if not prohibited, by the applicant's spouse's religion. *Brief in Support of Appeal*, at 5. The AAO notes that there is nothing prohibiting the applicant's spouse from visiting the applicant periodically during the two-year period, furthermore, they were aware of this requirement when they were married in December 2002. Lastly, counsel asserts that separation would be unthinkable due to strict Indian traditions and social mores *Id.* at 4. However, this claim is not supported by sufficient evidence. Therefore, based on the record, the AAO finds that the applicant has failed to establish his spouse would suffer hardship beyond the anxiety and loneliness ordinarily anticipated from a two-year separation, if she remained in the U.S. while the applicant returned temporarily to India.

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 his burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.