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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: JUL 06 2006

IN RE:

[REDACTED]

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:

[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 waiver application was denied by the Acting 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 citizen of the Philippines 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 May 26, 1994. The applicant has a U.S. spouse and two U.S. citizen children. She presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to her spouse and children.

The acting director determined that the applicant failed to establish her spouse or children would experience exceptional hardship if she fulfilled her two-year foreign residence requirement in the Philippines. *Acting Director's Decision*, dated March 16, 2005. The application was denied accordingly.

On appeal, counsel asserts that the applicant has demonstrated that there would be exceptional hardship to her spouse and children if she fulfilled the foreign residency requirement. *See Form I-290B*, dated April 12, 2005.

The record includes, but is not limited to, counsel's brief, invoices for the applicant's spouse's business, psychological reports on the applicant's spouse and children, teachers' letters for the applicant's older child, doctors' letters for the applicant's children, photos of the applicant's family, an affidavit from the applicant, an affidavit from the applicant's spouse, letters from friends and family of the applicant and numerous articles regarding kidnapping, safety and terrorism issues in the Philippines. 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 [now the Director, U.S. Department of State, Waiver Review Division (WRD), "Director"] 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).

The first step required to obtain a waiver is to demonstrate that a qualifying relative would experience exceptional hardship upon relocation to the Philippines for two years. In regard to the applicant's spouse, the applicant states that he must remain in the United States as he owns his own company, he would lose the company because it is impossible to run it from the Philippines and he is the source of economic support for the family. *Applicant's Statement*, at 2, dated December 21, 2004. However, there is no evidence that the applicant cannot find employment in the Philippines for the two-year period or that he would be unable to find someone to assist with his business for two years.

In regard to the applicant's older child, counsel states that he has eczema which will be exacerbated by stress and poor environmental conditions. *Brief in Support of Appeal*, at 2, dated May 10, 2005. The record does not reflect that he cannot receive medicine for this condition in the Philippines. Counsel also states that the applicant's older child is acculturated and he suffers from severe separation anxiety. *Id.* In regard to the separation anxiety claim, the record indicates that he had difficulty leaving his mother at school, but he has adjusted. *Teacher's Letter*, dated April 8, 2005. The teacher also states that dramatic changes would cause him to regress. *Id.* The AAO notes that the applicant's spouse has the choice to relocate to the Philippines in order to avoid potential separation anxiety for the older child.

Counsel asserts that the applicant's younger child has recurring otitis media, which requires antibiotic therapy, and that it will be exacerbated by stress and poor environmental conditions. *Brief in Support of Appeal*, at 7. There is no indication that he cannot receive medicine for this condition in the Philippines. Counsel states that social and political conditions would pose a great danger to the children and the applicant's brother has a very public government post which would put them at risk for kidnapping. *Id.*, at 2. However, there is no evidence that any of the applicant's brother's relatives have faced any problems due to their relationship to him.

The record includes voluminous supporting documentation with respect to issues of safety and the AAO has considered it in making this decision. The applicant and her family can relocate to safer areas within the country. The applicant also notes the high levels of pollution in the Philippines. *Id.* at 7. The AAO notes that relocation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. Furthermore, the applicant was aware of the two-year requirement since entering on the J1 visa over twelve years ago. Therefore, based on the evidence contained in the record, the AAO finds that the applicant has failed to establish that a qualifying relative would suffer exceptional hardship upon relocation to the Philippines.

The second step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship upon remaining in the United States during the two-year period. In regard to the applicant's spouse, the psychologist states that he has a history of depression and he is manifesting exacerbated symptoms of a major depressive disorder. *Psychological Re-evaluation*, at 2, dated May 4, 2005. However, the record does not include any evidence that he was ever treated for depression. In addition, the reevaluation makes no mention of a follow-up appointment, proposed therapy or treatment for the applicant's spouse. The applicant states that her spouse works long hours and could not take on the role of a single parent to their children. *Applicant's Statement*, at 2. The AAO notes that single parent households are not uncommon in the United States.

The applicant states she is the primary caregiver for her children and they have never been separated from her for more than a few hours. *Id.* at 3. She states that they would be without the presence of any parent for the

majority of their waking hours. *Id.* Separation entails inherent emotional stress and the record reflects that the applicant's spouse and younger child will face the common problems of separation which do not constitute exceptional hardship. In light of the teachers' letters, applicant's statement and psychological evaluations, it appears that the applicant's older child will face significant emotional problems, which constitute exceptional hardship, if separated from the applicant for two years. However, it has not been established that he couldn't accompany his mother to the Philippines.

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.