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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUN 20 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, Vermont Service Center, denied the waiver application. It is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 on July 20, 1993 as a participant in the American Intercultural Student Exchange. She remained in the United States in J-1 status for a period of one year while she attended high school in the United States. She departed the United States at the end of the exchange program and was subsequently admitted to the United States, first on an F-1 non-immigrant visa to attend college, then on an H-1B nonimmigrant visa after she completed her studies. She is still 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). She married a United States citizen on February 22, 2003. Their daughter was born on August 21, 2003. The applicant is seeking a waiver so that she may remain in the United States with her husband and child.

The director found that the applicant did not establish exceptional hardship to her husband and child whether they remained in the United States or joined her for two years in Russia. *Decision of the Center Director*, February 15, 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 both the applicant's husband and son if the applicant is required to return to Russia for two years.

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 and/or child faces exceptional hardship in both Russia and the United States if the applicant fulfills her 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 has provided considerable information concerning the impact that her two-year return to Russia would have on both her husband and child, whether they accompany her or remain in the United States. If the applicant's husband and child accompany the applicant to Russia, her husband would be unable to find work as an architect, his profession, due to language difficulties, differences in architectural style used in Russia, the glut of Russian architects for the number of positions available and the economic situation in Russia. *See, Statement of* [REDACTED] September 27, 2004. The applicant would be jeopardizing his career and giving up his position as an architect in the United States if he lived with his wife in Russia for two years. *See, Statement of* [REDACTED] September 8, 2004. The applicant would also have great difficulty finding work in Russia, because she left Russia when she was in high school, has never worked in Russia and

was trained in the United States for a profession for which there is no demand in Russia. She has an undergraduate degree in biology from Kansas State University and a Masters in Public Health from Yale University. The limited opportunities available in Russia for health care professionals are in patient care, not public health. *Statement of* [REDACTED] March 14, 2005. Further, Russia has a system of internal passport identifying a person's residence and requiring a long bureaucratic process to move to a different part of Russia. *Id.* The applicant is a resident of Salavat, a poor city of 150,000 in the southwestern Ural Mountains, with very few professional opportunities other than a large oil processing plant. She has no friends or family outside Salavat. Lacking resources, she would be required to live with her mother and father. Her father is unemployed, alcoholic and abusive. He has been diagnosed with schizophrenia but has refused to get treatment. *Id.* The applicant's husband and child would only receive permission to live as temporary residents with a sponsor. The only family member available to sponsor them is the applicant's mother, as the applicant upon return would be both unemployed and lack a residence of her own. The temporary residence listed for the applicant's spouse and daughter would therefore be listed as Salavat. They would not be allowed to move to a different location from that listed on their temporary visa. *Id.* The child would have difficulty in school because she does not speak Russian and because the educational system is impoverished. *Id.*

The applicant's husband has been treated off and on for depression since he was in high school. *See Letter of* [REDACTED] *Letter of* [REDACTED] M.D., March 8, 2005; *Letter of* [REDACTED] Director of Counseling, His Mansion Ministries. He remains in counseling in the United States. *Letter of* [REDACTED] III. His condition long predates his wife's immigration difficulties. However, his current therapist, as well as a former therapist, both opined that separation from his wife and possibly his daughter would have a serious, damaging effect on his mental health. *See Letter of* [REDACTED] and *Letter of* [REDACTED]

In general, the typical spouse and child would have to deal with separation and financial stress or living in a strange country with language difficulties. Due to the relative wealth and stability of the United States, it is likely that any spouse and child relocating to Russia from this country for two years would face problems finding comparable medical care and employment and could face relative poverty. Adding to the difficulty facing the typical American faced with similar circumstances are unfamiliarity with the language, the unavailability of suitable child-care and restrictions on where temporary residents may live. All these factors make Russia a difficult place to live and care for an American child for two years. What make the circumstances in this matter exceptional are the mental and emotional conditions of both the applicant's father and her husband.

The effect that either relocating to Russia or remaining in the United States separate from the applicant would have on the applicant's husband, and the effect that the applicant's husband's condition, stemming from that relocation or separation, would have on his daughter, are unique and exceptional. The applicant has established that she and her daughter, if the daughter accompanied her to Russia, would have to live with her mother, which also means that a two year old girl would have daily exposure to the applicant's father, who is an alcoholic, abusive schizophrenic. If the applicant's daughter lives in Russia, she will be living with a mentally ill abuser for two years, under circumstances where there may be no opportunity to escape. When the added difficulties of language, poverty, lack of child-care and limited educational opportunities are factored in, the applicant's daughter would suffer exceptional hardship if she relocated to Russia. The

applicant's husband father would be worried about his daughter's well-being in that environment whether he was in Russia with her or in the United States. That stress, combined with his inability to earn a living or even speak to non-English speakers if he were in Russia, could affect his own mental illness, and as his mental condition worsened it could affect his ability to deal with his daughter. In addition, in Russia, the applicant's husband would be another adult to feed in a family already having financial difficulties.

If the applicant's daughter and husband stay in the United States, the daughter would be separated from her mother and living with a father who works long hours and has a history of becoming depressed under difficult circumstances. Those circumstances would include his added care responsibilities for his daughter, separation from his wife, the cost of child-care and of supporting his wife in Russia, as well as worry about his wife living with her abusive father. His history indicates that he has difficulty maintaining job performance during his episodes of depression. *See Letter of [REDACTED]* the applicant's husband would have both the added financial burden of long hours of care for his daughter as well as helping his wife living in an impoverished town in Russia without employment prospects. The added pressure could put his mental health at risk. Under the best of circumstances, separation from either her mother or father would have a significant, potentially long-term effect on the applicant's daughter. *See Letter of [REDACTED] M.D.*, Associate Clinical Professor of Pediatrics, Yale University School of Medicine, July 28, 2004. Living with parents facing the stress of separation or unemployment or financial difficulties would also have an impact on the applicant's daughter. *Id.* The applicant's daughter would also either face daily interaction with her mentally ill grandfather, or being raised for two years exclusively by her father, who suffers from depression that would be worsened by separation from his wife and her mother.

The circumstances presented in this matter are unique, especially with respect to the applicant's daughter. Her father does not appear to be emotionally capable of caring for her during the time that her mother would be fulfilling her residence requirement. However, she would be living with an alcoholic, schizophrenic abuser if she lived with her mother in Russia during that time. Either option would involve long separations from one of her parents at an age when she relies upon them. These circumstances are more than the typical difficulties resulting from a temporary separation. When the difficulties facing both the applicant's daughter and her husband are considered in the aggregate, they amount 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 met her burden. The AAO notes, however, that a waiver under section 212(e) of the Act may not be approved without the favorable recommendation of the Director, Waiver Review Division, United States Department of State (WRD). Accordingly, this matter will be returned to the director so that he may request a WRD recommendation under 22 C.F.R. § 514. If the WRD recommends that the application be approved, the application must be approved. If, however, the WRD recommends that the application not be approved, the application will be re-denied with no appeal.

ORDER: The appeal is sustained and the record of proceeding is returned to the service center director for further action consistent with this decision.