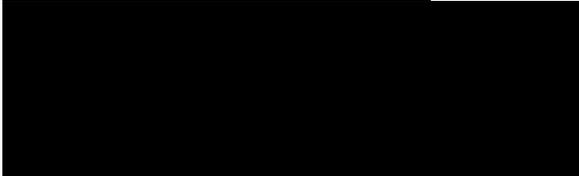




U.S. Citizenship  
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FEB 06 2007

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 sustained and the matter will be remanded to the acting director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State, Waiver Review Division (WRD).

The record reflects that the applicant is a native and 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 J1 nonimmigrant exchange visitor on September 3, 1995. The applicant has a U.S. citizen spouse. He presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to his spouse.

The acting director determined that the applicant failed to establish exceptional hardship to his U.S. citizen spouse and denied the case accordingly. *Decision of the Acting Director*, dated June 16, 2006.

On appeal, counsel asserts that acting director erred in denying the case as the applicant's spouse would face exceptional hardship. *Form I-290B*, received July 14, 2006.

The record includes, but is not limited to, counsel's brief, statements from the applicant and his spouse, photographs, psychiatric evaluations of and a treatment summary for the applicant's spouse, informational material on depression and letters regarding the contributions made by the applicant's spouse in treating the mentally ill in Cuyahoga County, Ohio. The entire record was reviewed and considered in arriving at a decision on the appeal.

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).

The first step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship upon relocation to Russia for two years. Counsel states that trying to assist her husband survive in Russia would be a hardship for the applicant's spouse as he is a double amputee with burns over forty percent

of his body. *Brief in Support of Appeal*, at 3-4, undated. The applicant details the difficulties of being a disabled person in Russia, although he was able to obtain his Ph.D. while there. *Applicant's Statement*, at 1-3, undated. Counsel states that the applicant's spouse does not speak Russian, therefore, it is highly unlikely that she would obtain employment in Russia in her chosen field. *Brief in Support of Appeal*, at 5.

Counsel states that the applicant's spouse suffers from chronic depression and this increases the probability that she will develop major depressive disorder during stressful times. *Id.*, at 1-2. The record includes a July 27, 2006 psychiatric evaluation which details abuse in the applicant's spouse's upbringing, and her lengthy history of depression and emotional issues. *Psychiatric Evaluation*, at 2-3, dated August 8, 2006. There is also a psychiatric evaluation dated September 15, 2004. The record includes a treatment summary and recommendations from the applicant's spouse's social worker of many years. *Social Worker's Letter*, dated August 19, 2005. The applicant's spouse states that her elderly parents, who are in fragile health, depend on her for their care. *Applicant's Spouse's First Statement*, at 2, dated May 23, 2005. The applicant's spouse states that the convergence of stress factors in this situation would be beyond anything she could handle in light of her vulnerability under stressful situations. *Applicant's Spouse's Statement*, at 3, dated July 31, 2006. Based on the aforementioned factors, the AAO finds that the applicant's spouse would suffer exceptional hardship upon relocation to Russia for two years.

The second step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship upon residing in the United States during the two-year period. Counsel states that the applicant has provided emotional and psychological support which is necessary to overcome and deal successfully with her disorder. *Brief in Support of Appeal*, at 2. The applicant's spouse details her mental health history and how her relationship with the applicant stabilized her mental health. *Applicant's Spouse's Statement*, at 2. Considering the aforementioned psychiatric evaluation and social worker's letter, it is plausible that the applicant's spouse would have serious medical problems upon separation for two years. Based primarily on the applicant's spouse's mental health history, the AAO finds that separation will result in exceptional hardship if she remains in the United States during the two-year period.

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 his burden. The appeal will therefore be sustained. The AAO notes, however, that a waiver under section 212(e) of the Act may not be approved without the favorable recommendation of the WRD. Accordingly, this matter will be remanded to the acting 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 secretary may waive the two-year foreign residence requirement if admission of the applicant to the United States is found to be in the public interest. However, if 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 remanded to the acting director for further action consistent with this decision.