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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship and Immigration Services

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PUBLIC COPY

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JAN 04 2007

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 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 Georgia 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 last admitted to the United States in J1 nonimmigrant exchange status on January 6, 2001. The applicant has a U.S. citizen spouse and stepchild (child). The applicant presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to her spouse and child.

The director determined that the applicant failed to establish that a qualifying relative would experience exceptional hardship if she fulfilled her two-year foreign residence requirement in Georgia, and the application was denied accordingly. *Director's Decision*, dated September 30, 2005.

On appeal, counsel asserts that the director failed to consider hardship to the applicant's child and the qualifying relatives would suffer exceptional hardship. *See Form I-290B*, dated October 31, 2005.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, photos of the applicant and her spouse, support letters, a list of pharmaceutical prices in Georgia, financial documents, medical records and information on Georgia. The entire record was considered in rendering this decision.

The record also includes a "no objection" letter from the Embassy of Georgia which is addressed to the USCIS Vermont Service Center. However, there is no indication of a favorable recommendation from the Department of State based on their receipt of a "no objection" letter. Therefore, it does not appear that this letter was sent to the Department of State Waiver Review Division from Georgia's foreign office in order to receive a favorable recommendation.

22 C.F.R. § 41.63(d) states in pertinent part that:

Applications for waiver of the two-year home-country physical presence requirement may be supported by a statement of no objection by the exchange visitor's country of nationality or last legal permanent residence. The statement of no objection shall be directed to the Director through diplomatic channels; i.e., from the country's Foreign Office to the Agency through the U.S. Mission in the foreign country concerned, or through the foreign country's head of mission or duly appointed designee in the United States to the Director in the form of a diplomatic note. This note shall include applicant's full name, date and place of birth, and present address. Upon receipt of the no objection statement, the Waiver Review Branch shall instruct the applicant to complete a data sheet and to provide all Forms IAP-66 and the data sheet to the Waiver Review Branch. If deemed appropriate, the Agency may request the views of each of the exchange visitor's sponsors concerning the waiver application.

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 Georgia for two years. The applicant’s spouse’s son has mild persistent asthma. *Letter from [REDACTED] M.D.*, dated January 26, 2004. The applicant’s spouse states that taking his son to Georgia will be psychologically traumatic because of his dependence on his biological mother.<sup>1</sup> *Applicant’s Spouse’s Statement*, dated June 5, 2005. The record includes a letter which details the inadequate medical insurance system, the expensive nature of chronic asthma and cough medicine, and the climate’s negative impact on patients with chronic asthma and cough. *Letter from Director of [REDACTED]*, dated October 24, 2005. However, there is no evidence that the applicant or her spouse could not afford the medicine. 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 Georgia.

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. The applicant’s spouse states that it will be an immense emotional hardship for the child to be left without him and the applicant. *Applicant’s Spouse’s Statement*. There is no requirement that the applicant’s spouse leave the United States. The record does not indicate that the applicant’s stepson would experience any hardship if his father were to remain with him in the United States. No other contentions are made regarding this prong of the analysis. The record does not demonstrate that a qualifying relative would face exceptional hardship upon remaining 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 not met her burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The record does not include any legal documents related to the custody of the applicant’s child in order to determine whether the applicant’s spouse or child could leave the United States for two years.