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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 08 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:



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 Director, California 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 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 in J1 nonimmigrant exchange status on February 7, 2002. She returned to Russia on March 4, 2002 and came back to the United States with an F-1 student visa on December 22, 2003. Therefore, the applicant only has to return to Russia for seventy-three days. The applicant has a U.S. citizen spouse and she presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to her spouse.

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 Russia, and the application was denied accordingly. *Director's Decision*, dated January 20, 2006.

On appeal, counsel asserts that the applicant submitted ample evidence of hardship to her spouse. *Form I-290B*, dated February 21, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, the applicant's statement, a home closing statement, medical records for the applicant's spouse's father, an unemployment insurance decision for the applicant's spouse, photos of the applicant and her spouse, support letters, a psychological evaluation for the applicant's spouse, and information and articles on Russia. The entire record was considered in rendering this decision.

Counsel states that the director refused to believe that the applicant was unaware of the foreign residency requirement. *Brief in Support of Appeal*, at 4, dated March 15, 2006. The fact that the applicant returned to the United States approximately ten weeks before her foreign residence requirement would have been met indicates that she may have been unaware of the requirement. However, this does not absolve her of complying with the relevant statutory requirements.

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 Russia for seventy-three days. Counsel states that the applicant is unemployable in Russia as she gave up her license to practice law and there is a continued threat on her life. *Brief in Support of Appeal*, at 9. The claim of danger relates to the applicant’s prior involvement in a legal matter, however, she is no longer involved in the case. The record includes information on safety issues and the influence of the mafia in her town. However, there is no evidence that the applicant and her spouse could not reside in a different part of the country. Counsel states that the applicant’s spouse does not speak Russian and does not have the financial means to accompany the applicant to Russia. *Brief in Support of I-612 Application*, at 4, dated November 1, 2005. The applicant’s spouse states that it would be impossible to pay for a trip to Russia, he would be completely isolated there, he would be unable to fulfill his obligations at home and he has family members with medical problems in the United States. *Applicant’s Spouse’s Statement*, at 1-2, dated July 14, 2005. Adapting to a new culture is a normal result of joining a spouse in a foreign country, as is adapting to a new financial situation. Considering the relatively short time that the applicant’s spouse would be required to reside in Russia, the AAO finds that the record does not establish that he would suffer exceptional hardship upon relocation to Russia.

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 seventy-three day period. Counsel states that the applicant’s spouse lost his job, sold his home and is living with his parents. *Brief in Support of Appeal*, at 3. The record includes substantiating evidence of these claims. Counsel states that the applicant is in a great position to work and alleviate the financial situation. *Brief in Support of I-612 Application*, at 4. Counsel states that the applicant is near the end of her child-rearing age and they are anxious to start having children. *Id.* at 9. Counsel states that the applicant assists in caring for the applicant’s spouse’s ill parents and this would result in hardship to the applicant’s spouse if she returned to Russia. *Id.* at 10. The record reflects that the applicant’s spouse’s father has moderate-to-severe Parkinson’s disease. *Letter from Harmeet S. Sachdev, M.D.*, dated March 6, 2006. Counsel also states that the applicant’s spouse’s mother has diabetes and glaucoma, and the applicant’s spouse’s brother is suffering from a painful illness. *Brief in Support of I-612 Application*, at 4. The record does not include substantiating evidence of the claims related to the applicant’s mother and brother. In addition, the AAO notes that separation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. Counsel states that the applicant’s spouse would experience stress due to the applicant’s dangerous situation in Russia. *Id.* at 5. There is no evidence that she could not reside in a safer area of the country, thus alleviating the applicant’s spouse’s concerns. The record reflects that the applicant’s spouse will face difficulties without the applicant, however, it does not demonstrate that he would face exceptional hardship upon remaining in the United States during the seventy-three day 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.