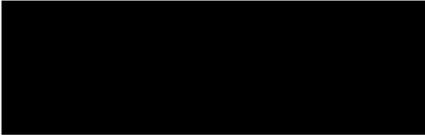




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



H3

FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 15 2007

IN RE:



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:



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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is moot.

The record reflects that the applicant is a citizen of Guyana who filed Form I-612, Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act, as amended. The record reflects that the applicant is no longer 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). On June 7, 2005, the U.S. Department of State (DOS), Waiver Review Division (WRD), recommended that the applicant's section 212(e) waiver be granted based on a No Objection application. *WRD Recommendation*, dated June 7, 2005. On July 12, 2005, Citizenship and Immigration Services (CIS) granted the waiver based on the WRD recommendation. *Form I-797*, dated July 12, 2005.

The acting director mentioned the WRD recommendation and stated that the adjudication of the applicant's Form I-612 is a moot issue, there is no provision for submitting Form I-612 when the USIA (now WRD) has recommended a waiver of section 212(e) of the Act, and the Form I-612 is denied. *Acting Director's Decision*, dated November 17, 2005.

On appeal, counsel states that the waiver was granted based on the WRD recommendation and to deny the waiver four months after granting it is an incorrect interpretation of the statute. *Form I-290B*, dated December 8, 2005.

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.

As mentioned in section 212(e) of the Act, "...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." On June 7, 2005, the U.S. Department of State (DOS), Waiver Review Division (WRD), recommended that the applicant's section 212(e) waiver be granted based on a No Objection application. *WRD Recommendation*, dated June 7, 2005. On July 12, 2005, Citizenship and Immigration Services (CIS) granted the waiver based on the favorable WRD recommendation. *Form I-797*, dated July 12, 2005. The Form I-797 is evidence that the Secretary has waived the two-year foreign residence requirement based upon the favorable recommendation of the WRD Director. In denying the Form I-612, the Acting Center Director was not denying the waiver of the two-year foreign residence requirement. She was merely acknowledging that the Form I-612 was no longer necessary.

No purpose would be served in adjudicating the applicant's claim of persecution on account of political opinion because the applicant has already been granted a waiver of the two-year foreign residence requirement by the Secretary based on the no objection letter. Therefore, the applicant's appeal is moot.

ORDER: The appeal is dismissed.