

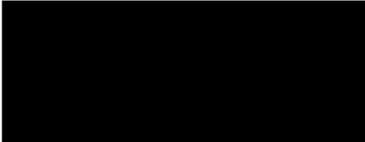
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U.S. Citizenship  
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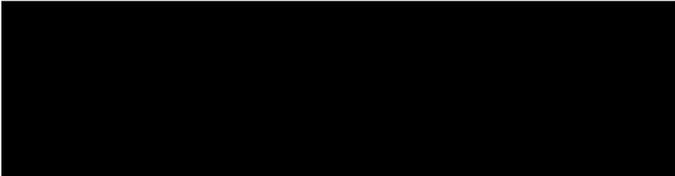
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FILE: A 88 102 155 Office: CALIFORNIA SERVICE CENTER Date: NOV 30 2007

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 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 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 January 18, 1996. The AAO notes that the applicant departed the United States on June 26, 1996 and has subsequently entered and departed the United States with several different F1 student visas. Any time that the applicant spent in Russia during her departures would count towards the two-year requirement. Therefore it appears that the amount of time that the applicant would be required to spend in Russia is less than two years. The applicant's spouse is a U.S. citizen. The applicant 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 her spouse would experience exceptional hardship if she fulfilled the two-year foreign residence requirement in Russia and the application was denied accordingly. *Director's Decision*, dated April 26, 2007.

On appeal, counsel asserts that the director erroneously denied the application and failed to consider the totality of the circumstances. *Brief in Support of Appeal*, at 1, undated.

The record includes, but is not limited to, two briefs from counsel, counsel's I-612 cover letter, the applicant's spouse's statement, the applicant's statement, country conditions information on Russia and photographs of the applicant and her spouse. The entire record was considered in rendering this decision.

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, Department of Homeland Security (DHS), "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*. (Quotations and citations omitted).

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).

Counsel asserts that *Matter of Chong*, 12 I&N Dec. 793 (1968) found that major disruption to the career/education of an applicant's spouse was the basis for an exceptional hardship finding. *Brief in Support of Appeal*, at 4. The AAO notes that *Matter of Chong* involved a situation where the Department of State had already recommended granting a waiver whereas no waiver recommendation has been received in the instant case. Counsel also cited *Matter of Savetmal*, 13 I&N Dec. 249 (1969) which involved a lawful permanent resident spouse who was the only urologist in his community and who would be forced to start over again if he returned to the United States. *Id.* at 6. The AAO will consider *Matter of Savetmal* to the extent it relates to the applicant's case.

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 the applicant's spouse would be forced to abandon his career path, he would be forced upon his return to pick up where he left off, his professional growth at [REDACTED] has already been delayed as a result of his service in the U.S. army, there is no guarantee that it would be possible for him to again resume his career at [REDACTED] after returning from Russia and it will be impossible to make a decent living in Russia as the salary levels are lower and jobs are scarce. *Brief in Support of Appeal*, at 6. Counsel states that the applicant's spouse does not speak Russian and this would be barrier to finding employment. *Second Brief in Support of Appeal*, at 4, dated October 17, 2007. Counsel states that the applicant's spouse's grandmother, mother, stepfather and two sisters reside in Massachusetts and they are cohesive family who rely on each other for guidance and support. *Id.* at 3.

Counsel states that the applicant's spouse was born in Haiti, there is pervasive racism against minorities in Russia, he will face daily threats of racism, and racial attacks have been reported in cities across the Russian Federation. *I-612 Cover Letter*, at 2, dated November 10, 2006. The record includes numerous articles and reports which render the applicant's spouse's fear of racist attacks plausible. In addition, there is no indication that the applicant's spouse has any ties to Russia, other than the applicant. A review of the record demonstrates that exceptional hardship will be imposed on the applicant's spouse 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 by remaining in the United States during the two-year period. Counsel states that the applicant's spouse is employed as an insurance reimbursement agent, the applicant is working as a quality control engineer, they are having difficulty maintaining one household, Moscow is one of the world's most expensive cities to live in, and the applicant's spouse would not be able to financially support two households. *Brief in Support of Appeal*, at 4. Counsel states that the applicant and her spouse have not been able to accumulate any financial reserve and the applicant's spouse will be left without the applicant's emotional support. *Id.* at 8. The applicant states that it would be nearly impossible to pay off his and the applicant's \$10,000 debt and support her in Russia. *Applicant's Statement*, dated June 20, 2007. Counsel also states that the applicant's spouse is suffering from depression. *Second Brief in Support of Appeal*, at 3. The record does not include substantiating evidence of the aforementioned claims of hardship and that these hardships rise to the level of exceptional hardship, as in *Matter of Bass*, 11 I&N Dec. 512 (D.D. 1966), a case cited by counsel. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, the AAO notes that separation as a result of removal commonly creates emotional stress and financial and logistical problems. The record does not distinguish the hardships facing the applicant's spouse from the common hardships confronting other individuals who have been separated from a family member. A review of the record does not demonstrate that exceptional hardship will be imposed on the applicant's spouse 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.