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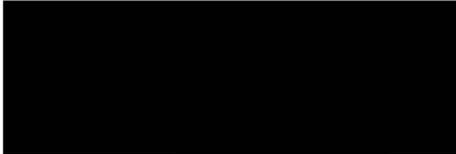
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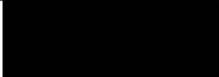
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

APR 03 2008

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:

SELF-REPRESENTED

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 Kyrgyzstan who was admitted to the United States in J-1 nonimmigrant exchange status on August 14, 2006, to participate in a program financed by the U.S. Department of State. He is thus 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 presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen spouse would suffer exceptional hardship if she moved to Kyrgyzstan temporarily with the applicant and in the alternative, if she remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Kyrgyzstan.

The director determined that the applicant failed to establish that his spouse would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Kyrgyzstan. *Director's Decision*, dated August 9, 2007. The application was denied accordingly.

In support of the appeal, the applicant provides a letter from [REDACTED] D., Psychology Department Chair, Limestone College, dated September 6, 2007, a statement from the applicant's spouse, dated September 10, 2007 and documentation confirming that the applicant's spouse is pregnant, with an expected delivery date of May 3, 2008.¹ The entire record was reviewed and considered in rendering this decision.

Section 212(e) of the Act states in pertinent part that:

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

¹ Any statements made by the applicant's spouse regarding hardships that their unborn child would face were the applicant to comply with his two-year foreign residency requirement are speculative and can not be considered by the AAO at this time.

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 establish that the applicant’s spouse would experience exceptional hardship if she resided in Kyrgyzstan for two years with the applicant. As stated by the applicant,

...I am eager to go back with her [the applicant’s spouse] to my home country however, she has got Government and South Carolina State loan, which she used for her College. If she will return with me to my home country, she will have hardship after coming back to the USA to repay her loan....

Not only financial hardship but also culture, tradition and language will create her negative psychological impact. I am ethnically Uzbek that we strictly follow our culture and tradition. My wife on the other hand...is racially African American. I am concerned on her being comfortable in my country but I am afraid that she will be subject to discrimination in any forms. Moreover, she graduated from college and started building a career. In my country she will find technological, as well as work facility difference than in the USA, where she will not be able to develop her skills and lead to loose her skills on her major. She does not speak our native language therefore she will encounter language barrier to get a job and loose her skills and time.... In my country she will have cultural shock and hardship to adapt to new culture and tradition....

Letter from [REDACTED] dated May 29, 2007.

It has not been established that the applicant and/or his spouse would be unable to obtain gainful employment in Kyrgyzstan, thereby permitting the applicant’s spouse to repay her student loans. In addition, the record does not contain any evidence of the applicant’s spouse’s professional goals or current employment, to document that departing the United States for a two-year period would cause a career setback that would lead to exceptional hardship. Moreover, no evidence has been provided that confirms that the applicant’s spouse would be subject to discrimination based on race. Finally, no documentation from a mental health professional or treating physician has been provided that establishes that relocating abroad for two years would cause the applicant’s spouse exceptional psychological hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). As such, despite the director’s statement to the contrary, the AAO concludes that it has not been established that the applicant’s spouse would experience exceptional hardship were she to relocate with the applicant to Kyrgyzstan for a two-year period.

The second step required to obtain a waiver is to establish that the applicant's spouse would suffer exceptional hardship if she remained in the United States during the two-year period that the applicant resides in Kyrgyzstan. As stated by the applicant's spouse,

...My life has never been an open book nor has my heart until now until my husband. I don't want to be like how I used to be withdrawn, not confident, sad, and alone. In my lifetime so far I have seen my father use drugs and alcohol to cope and abuse to control. I did not want to be him. However, I became what I feared; being like him. I put a mask on so long.... My husband is helping me to open up and to show me that I don't have to be ashamed of my problems....

My husband tells me that this is no way to live. He is still helping me to open up with others but it takes time. I am so blessed to have him in my life. He is like my blanket. If a situation is uncomfortable for me he accompanies me to help me be comfortable. I am taking baby steps that will help me in life. I'm so happy to have my husband to help.... I am so in love so happy that we are expecting our first child. I feel that we are building a life together. I can't be left alone.... I don't have any insurance and the only income I have is from my internship which will not last long. I need my husband to support me financially and mentally this is a lost of stress.... We are a family. Please don't separate us....

Letter from [REDACTED], dated September 10, 2007.

The applicant provides a letter from [REDACTED], Limestone College, to elaborate on the psychological issues with respect to his spouse. As stated by [REDACTED],

.. [the applicant's spouse] has asked me to disclose in this letter the personal problems that she shared with me when she was in my class and during the months following that term when we talked on a fairly regular basis. I am a psychologist who formerly worked in the **mental health field before devoting my career full-time as a college professor....** [REDACTED] was my student, so our discussions were informal.... After asking her at the end of one class how she was doing generally, we began conversations about her depressed moods. She mentioned having bad problems with drugs and alcohol too. I encouraged her to seek specialized treatment in all those areas. I do not know to what extent she may have followed up on our series of conversations with professional treatment since we have been out of touch for the past year.... I will say that my impression of her is that she has strong dependency needs...and has been chronically depressed at least on a mild level.... It is likely that she has shifted her dependency needs from her family to her husband, and it would not surprise me if she coped very poorly with any separation from him; however, I am reluctant to make any predictions of what she would do.... Again, I must make

it clear that she was not a formal client of mine in psychotherapy but rather was my student and was someone who shared this with me informally....

Letter from [REDACTED], Limestone College, dated September 6, 2007.

The applicant has not provided documentation with respect to the applicant's spouse's current medical situation, its short and long-term treatment plan and its severity. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter from [REDACTED] is based on an informal professor and student relationship. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the disorders referenced in [REDACTED]'s letter. Moreover, the conclusions reached in the submitted letter, being based on informal discussions, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED]'s findings speculative and diminishing the letter's value to a determination of exceptional hardship.

In addition, no financial documentation has been provided to establish that without the applicant's presence in the United States, his spouse will suffer exceptional financial hardship. Finally, it has not been documented that the applicant would be unable to obtain gainful employment in Kyrgyzstan, thereby permitting him to help his spouse with the maintenance of the U.S. household. As such, it has not been established that the applicant's spouse is unable to take care of herself should the applicant have to relocate for a two-year period.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face exceptional hardship if the applicant's waiver request is denied. The AAO finds that the applicant has failed to establish that his spouse would suffer exceptional hardship were she to relocate to Kyrgyzstan and in the alternative, the AAO finds that the applicant has failed to establish that his spouse would suffer exceptional hardship if she remained in the United States while the applicant fulfilled his two-year foreign residence requirement.

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 his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.