

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

H3

**PUBLIC COPY**

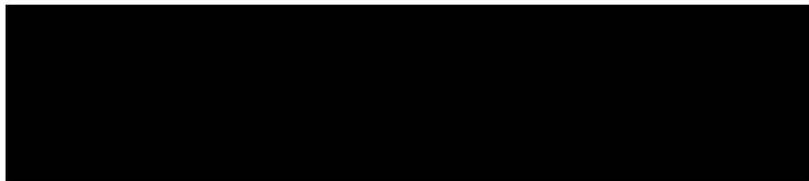


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **APR 22 2008**

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of the Foreign Residence Requirement of 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 remanded to the director for further action consistent with this decision.

The applicant is a native and citizen of the Philippines who was admitted into the United States as a J-1 nonimmigrant exchange visitor in February 2005. Despite counsel's assertions to the contrary, the U.S. Department of State has determined that the applicant 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) based on the Exchange Visitor Skills List. The applicant presently seeks a waiver of her foreign residence requirement, based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to the Philippines temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled her foreign residence requirement in the Philippines.

The director concluded that the applicant failed to establish that her spouse would experience exceptional hardship if the applicant fulfilled her foreign residence requirement in the Philippines. *Director's Decision*, dated September 12, 2007. The application was denied accordingly.

On appeal, counsel provided, inter alia, a copy of a recommendation based on a No Objection application, issued by the U.S. Department of State to the applicant, dated January 15, 2008.

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 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.

Based on the record, it has been established that approval of a waiver of the applicant's two-year foreign residence requirement based on a No Objection application has been recommended by the U.S. Department of State. Therefore, no purpose would be served in discussing whether the applicant had established extreme hardship to a qualifying relative. Accordingly, the application will be remanded to the director for adjudication of the Form I-612 based on the No Objection recommendation issued to the applicant by the U.S. Department of State on January 15, 2008.

**ORDER:** The matter is remanded to the director for further action consistent with this decision.