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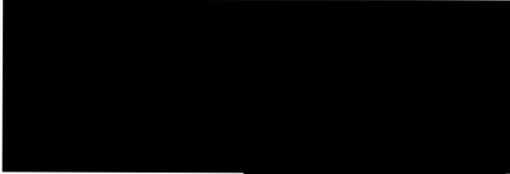
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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Services

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FILE:

Office: NEBRASKA SERVICE CENTER

Date: FEB 01 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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the matter will be remanded to the director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State, Waiver Review Division (WRD).

The record reflects that the applicant is a citizen of El Salvador 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 visitor status on August 26, 2004. 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 El Salvador and the application was denied accordingly. *See Director's Decision*, dated February 6, 2007.

On appeal, the applicant asserts that her spouse will encounter financial and medical hardship if she fulfills the two-year foreign residence requirement. *See I-290B Attachment*, at 2, dated February 28, 2007.

The record includes, but is not limited to, the applicant's statement, the applicant's spouse's statement, the applicant's spouse's father's statement, the applicant's spouse's grandfather's statement, a medical letter for the applicant's spouse, and country conditions information on El Salvador. 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).

The first step required to obtain a waiver is to demonstrate that exceptional hardship would be imposed on a qualifying relative upon relocation to El Salvador for two years. The AAO notes that El Salvador is currently designated under the Temporary Protected Status (TPS) program due to the devastation caused by a series of severe earthquakes. *Federal Register*, Vol. 72, No. 161, pp. 46649, Tuesday, August 21, 2007, Notices. Under the TPS program, citizens of El Salvador are allowed to remain in the United States temporarily due to the substantial disruption of living conditions and the inability of El Salvador to handle the return of its nationals. *Id.* at 46649-46650. As such, requiring the applicant's U.S. citizen spouse to relocate to El Salvador in its current state would constitute exceptional hardship. In addition, the applicant states that she and her spouse have strong commitments with their community and church in Spokane, his family moved to Spokane to stay closer to them and it will be hard for them to find jobs. *I-290B Attachment*, at 1-2. The applicant states that her spouse is 33 years old, he has cardiovascular disease, his father and grandfather experienced bypass surgeries at the ages of 38 and 36 respectively and his father and grandfather have each had several heart attacks since then. *Statements from Applicant's Spouse's Father and Grandfather*, dated June 20, 2006 and July 18, 2006 respectively. In regard to the applicant's spouse's medical issues, the applicant states that it will be hard to find health insurance, there are only 3,473 physicians in the entire nation, private hospitals are extremely expensive, unclean food and water would be a potential problem for her spouse's health and they will not have insurance in case of an emergency. *I-290B Attachment*, at 2. The record reflects that medical care in El Salvador is limited and emergency services are basic. *Department of State Consular Information Sheet for El Salvador*, at 4, dated February 8, 2006.

The applicant states that her spouse's ex-fiancé has a twelve-year old child, he supports the child financially and emotionally, and it would be difficult for her spouse to leave the child behind. *Applicant's Statement*, at 3-4. In addition, there is no indication that the applicant's spouse has any ties to El Salvador other than the applicant and he does not speak Spanish. Considering all of the aforementioned factors, the AAO finds that exceptional hardship would be imposed on the applicant's spouse upon relocation to El Salvador for two years.

The second step required to obtain a waiver is to demonstrate that exceptional hardship would be imposed on a qualifying relative by remaining in the United States during the two-year period. The applicant's spouse's grandfather states that he has hereditary cardiovascular disease, he has had two bypass surgeries, his first heart attack was at the age of 38, and his son and grandson have inherited heart disease, hypertension and high cholesterol. *Applicant's Spouse's Grandfather's Statement*, dated July 18, 2006. The applicant's spouse's father states that he had his first bypass surgery when he was 38 and he has had three more heart attacks since then. *Applicant's Spouse's Father's Statement*, dated July 20, 2006. The applicant's spouse's primary care provider states that the applicant's spouse has a significant history of heart disease, he runs a definite risk of experiencing premature myocardial infarction or ischemia before the age of 40, he has been under medical supervision for the last two years, it is essential that he maintain a stable psychological and emotional environment and that he and the applicant stay in the United States indefinitely. *Letter from [REDACTED] Ph.D., PA-C*, dated August 10, 2006.

The applicant states that she takes care of her spouse, he is under daily medications for his conditions she looks after his diet and medicine intake and it has been very difficult for him to take care of himself. *Applicant's Statement*, at 1. The applicant's spouse states that the applicant has been a tremendous help to her

as she prepares healthy meals for him, she makes sure he stays on his medication schedule, it was difficult for him to remain consistent with his medications and to eat right as a single man, and it would not be possible for him to maintain low stress if the applicant were in El Salvador. *Applicant's Spouse's Statement*, at 1, dated August 16, 2006. The record reflects that El Salvador is a critical crime-threat country, thereby rendering the applicant's spouse's concern for the applicant plausible. *Department of State Consular Information Sheet for El Salvador*, at 3.

The applicant states that her and her spouse fly her spouse's ex-fiancé's child to Spokane several times a year to stay with them for as long as possible, her spouse has a deep father-daughter relationship with the child, it would be psychologically difficult for him to cut her visits due to the financial limitations from being without her income. *Applicant's Statement*, at 3-4. The applicant's spouse states that when his ex-fiancé's child visits him in Spokane, the applicant is able to take care of her when he is at work, they have a very good relationship and it would be hard to have his ex-fiancé's child visit him with the applicant in El Salvador. *Applicant's Spouse's Statement*, at 3. The record includes credit card statements reflecting airline tickets and other items purchased for the applicant's spouse's ex-fiancé's child.

Considering the aforementioned factors, the AAO finds that exceptional hardship would be imposed on the applicant's spouse should he remain in the United States for two years.

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 met her burden. The appeal will therefore be sustained. The AAO notes, however, that a waiver under section 212(e) of the Act may not be approved without the favorable recommendation of the WRD. Accordingly, this matter will be remanded to the director so that he may request a WRD recommendation under 22 C.F.R. § 514. If the WRD recommends that the application be approved, the secretary may waive the two-year foreign residence requirement if admission of the applicant to the United States is found to be in the public interest. However, if the WRD recommends that the application not be approved, the application will be re-denied with no appeal.

**ORDER:** The appeal is sustained and the record of proceeding is remanded to the director for further action consistent with this decision.