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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEBRASKA SERVICE CENTER

Date: FEB 12 2008

IN RE:

APPLICATION:

Application for Waiver 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.

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 dismissed.

The record reflects that the applicant is a native and citizen of the former Yugoslavia (which, pursuant to the U.S. Department of State, has adopted the name Serbia and Montenegro) (Serbia) who obtained J-1 nonimmigrant exchange status on September 9, 2002 to participate in graduate medical education training. She 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 her two-year foreign residence requirement, based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to Serbia temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Serbia.

The director determined that the applicant failed to establish that her spouse would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Serbia. *Director's Decision*, dated February 7, 2007. The application was denied accordingly.

In support of the appeal, counsel provides a brief, dated March 8, 2007; a "no objection" statement and translation from the Republic of Serbia Ministry of Health on behalf of the applicant, dated December 5, 2005; a statement from the applicant, dated March 7, 2007; an affidavit from [REDACTED] a friend of the applicant and her spouse, dated March 7, 2007; an affidavit from the applicant attesting to her and her husband's relationship timeline; and a letter from the applicant outlining the health problems of her spouse's mother. In addition, on July 5, 2007, counsel submitted a supplemental brief; evidence that the applicant is pregnant with her first child, due to give birth on January 27, 2008; a letter from the applicant's spouse, dated June 27, 2007; and a letter from the applicant's sibling, dated June 15, 2007. 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 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 he resided in Serbia for two years with the applicant. To support this contention, the applicant states the following:

...If my husband were to follow me to the former Yugoslavia, our departure would again result in an exceptional hardship for him, his parents and my parents as well. He would have an extremely difficult time adjusting to a foreign culture. He has never traveled outside the United States in his entire life and has especially a fear to travel right now because he does not want to leave his mother. My husband will suffer significant disruption of his career, lose his job benefits and would not be able [to] obtain a leave of absence for two years. Given that he only speaks the English language, his educational and employment opportunities in the former Yugoslavia would be none. Also, the political conditions in the former Yugoslavia are generally inhospitable, and there is potential of harm to my husband as U.S. citizen given the once extreme and negative sentiment towards the United States....

Most importantly, my mother-in-law is afflicted with cancer. She has had surgical treatments and chemotherapy. As a result of her illness, her physician gave her two more years to live. She also has developed a severe anemia, which resulted in her needing a constant blood transfusion.... The separation from my husband’s mother could only add to the mental anguish. I cannot reasonably expect from my husband to accompany me and deprive my mother-in-law of his care.... My father-in-law is ill himself and has had problems walking but thus far has refused to have a surgery due to the uncertainty of his wife’s health....

Personal Statement from [REDACTED]

The applicant’s spouse elaborates on the concerns outlined above. As stated by the applicant’s spouse,

...I have been gainfully employed for over twenty years and have made a life commitment to my only employer and fellow co-workers to stick with them, advance within the company, and contribute to their productivity for the rest of my professional career. I would like to do that without any obstacles....

Besides the difficulty of our financial hardships we are faced if my wife and child would have to separate from me, there are many other factors at stake that make us bleed and tremendously suffer. I am already forty three years old—by no means a young man with a starting career. I am settled in my ways of life, care

and cherish very much my parents and freedom provided to me by them and this country. My mother is very ill, suffering from colon cancer (to mention one problem) that does not get better or ever will. We are lucky to have her each day in our lives but know that she may not be around in some foreseen future. As you can imagine, my mother is very dear to me, and leaving her sight, always causes pain to me that I may not see her again. I cannot imagine how it would be if I had to leave for a country that even my wife does not consider home any more and be forced to be there, raise my child in a foreign country, and not have an opportunity to ever see my mom again....

Letter from [REDACTED] dated June 27, 2007.

Based on the documentation provided, the AAO finds that the hardship the applicant's spouse would encounter were he to relocate to Serbia for a two-year period goes significantly beyond that normally suffered upon the temporary relocation of families based on a two-year home residency requirement. The record indicates that the applicant's spouse has never traveled nor lived outside the United States, nor is he able to speak, read or write in the native language. Moreover, he has been gainfully employed for two decades for the same employer, Visa Lighting, and hopes to continue working there for many more years; however, were he to relocate abroad for two years, his employer would have to replace him. Letter from [REDACTED] Director of Human Resources, Visa Lighting, dated December 8, 2005. In addition, the applicant's spouse's parents have been diagnosed with numerous documented medical problems of a serious, and in his mother's case, terminal, nature and the applicant's spouse would suffer emotional hardship were he to leave them for an extended period of time. Finally, the applicant's spouse would be concerned for his own safety and financial security in Serbia. The AAO thus concludes that the applicant's U.S. citizen spouse would experience exceptional hardship were he to accompany the applicant to Serbia for a two-year term.

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

...First, my husband is very dependent on myself for emotional support. Additionally, he has had psychological problems, past, present, especially over his mother's terminal and debilitating illness, and our separation would add to his mental anguish and potentially exacerbate his current state of mind.... Without my presence I am really worried about his psychological state of mind the most.... I would never like to see him suffer and go into deep depression as a result of my departure....

Moreover, my husband's health is exacerbated emotionally over the health of his ailing mother.... I was helping my husband go through very difficult times throughout our years together after my mother-in-law was diagnosed with cancer and was given limited amount of time to live...am worried that my mother-in-law's health and my husband's emotional well-being would be jeopardized if I

departed. My husband lives in fear that, while I am gone and far away, that my parents-in-law would suffer emotionally tremendously, which would have a huge impact on him....

Second, our separation would create many financial difficulties for his life.... Maintaining two households during the two-year separation would result in a tremendous loss for him...my unemployment in the former Yugoslavia would have a tremendous impact on my husband because he would need to take on the care for my parents and support not only our separate households and living expenses but help my parents as well....

Supra at 1-2.

To support the statements made with respect to the applicant's spouse's mental health condition, letters are provided by a social worker and his acupuncturist. Although the input of any professional is respected and valuable, the AAO notes that the submitted letters are not from specialists in the mental health field. Nor do they reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the disorders presumably suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted letters do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the findings of both the social worker and the acupuncturist speculative and diminishing their value to a determination of exceptional hardship. The record indicates that the applicant's spouse has been gainfully employed for over two decades with the same employing entity. His mental health issues and the pending departure of the applicant have clearly not hindered his ability to work full-time. As such, it has not been established that the applicant's spouse would suffer exceptional hardship were he to remain in the United States while the applicant relocated for a two-year period.

Moreover, while general information has been provided by counsel with respect to country conditions in Serbia, it has not been established that the applicant would be unable to obtain gainful employment in Serbia, thereby assisting with the maintenance of the households and the care of both her and her spouse's parents. Finally, no documentation has been provided with respect to the applicant's and her spouse's finances, or of their parents' finances, to establish the financial hardship the applicant's spouse would face without the applicant's presence in the United States. 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)).

The record, reviewed in its entirety, does not support a finding that the applicants' spouse will face exceptional hardship if the applicant's waiver request is denied. Although the AAO finds that the applicant has established that her spouse would experience exceptional hardship were he to relocate to Serbia with the applicant for the requisite two-year period, the applicant has failed to establish that her spouse would suffer exceptional hardship were he to remain in the United States without the applicant, for the requisite two-year term.

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.