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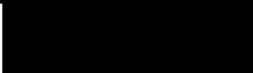
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

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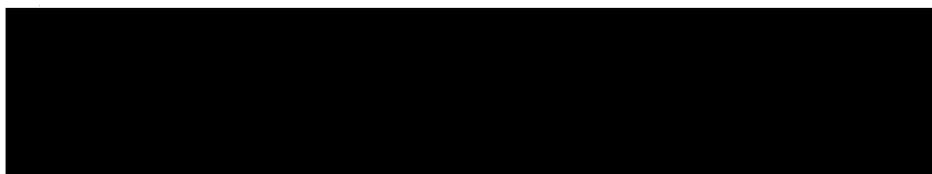
IN RE:



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

The record reflects that the applicant is a native and citizen of Venezuela who obtained J1 nonimmigrant exchange status on January 15, 2004 to participate in graduate medical education training. 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 residence requirement, based on the claim that his U.S. citizen spouse would suffer exceptional hardship if she moved to Venezuela 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 Venezuela.

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 Venezuela. *Director's Decision*, dated March 7, 2007. The application was denied accordingly.

In support of the appeal, previous counsel for the applicant¹ provided a brief, dated March 28, 2007 and an Addendum to Evaluation, provided by [REDACTED] Ph.D., LCSW, dated March 26, 2007. On November 19, 2007, the applicant's counsel provided a supplemental brief, dated November 19, 2007; information about country conditions in Venezuela; copies of two decisions from the AAO; a copy of a hardship waiver article; and a copy of *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965). 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

¹ The record indicates that the Form I-290, Notice of Appeal (Form I-290B), and supporting documentation was timely filed by [REDACTED] on March 28, 2007. However, in a letter dated November 19, 2007, [REDACTED] Esq. advised the AAO that he would be representing the applicant. A properly signed Form G-28, Notice of Entry was provided.

(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 she resided in Venezuela for two years with the applicant. To support this contention, the applicant states the following:

...At this point in our lives, we face the fact that I am required to return to Venezuela for at least two years as stated in the J-1 status. The fulfillment of this obligation would impose severe suffering to our family. If we decided to go together, [redacted] [the applicant's spouse] would have to abandon her career here in the United States after having trained for 15 years to become the highly skilled surgeon that she is. Besides, she would struggle financially, since she would still have to pay the loans she acquired while in medical school, something that is virtually impossible with the income of a surgeon in Venezuela. She would have to learn a new language and go through the process of validating her education. But above all, since we would locate at less than 20 miles from the Colombian border and as an American citizen, her life and freedom would be always at risk since kidnapping is a common practice for economic and political gain for the Colombian Guerillas, which freely move around western Venezuela. I should add that in the last 8 years the Venezuelan government has increased its anti-American tone. High rank officials, including the president, who was reelected for 6 more years and with intentions to change the laws to make it legal to be reelected indefinitely, periodically express anti-American sentiment, therefore, harassment of U.S. citizens by Venezuelan authorities might occur.

Affidavit of [redacted] dated December 12, 2006.

The Department of State, in its Consular Information Sheet for Venezuela, states, in pertinent part, the following:

Venezuela is a medium income country with a substantial oil industry. The political situation in Venezuela is highly polarized and volatile. Violent crime is a continuing problem. Assaults, robberies and kidnappings occur throughout the country....

Violent crime in Venezuela is pervasive, both in the capital, Caracas, and in the interior. The country has one of the highest per-capita murder rates in the world. Armed robberies take place in broad daylight throughout the city, including areas generally presumed safe and frequented by tourists. A common technique is to choke the victim into unconsciousness and then rob them of all they are carrying. Well-armed criminal gangs operate with impunity, often setting up fake police checkpoints. Kidnapping is a particularly serious problem, with more than 1,000 reported during the past year alone. According to press reports at least 45 foreigners have been kidnapped in the first eight months of 2007. Investigation of all crime is haphazard and ineffective. In the case of high-profile killings, the authorities quickly round up suspects, but rarely produce evidence linking these individuals to the crime. Only a very small percentage of criminals are tried and convicted.

Maiquetía Airport, the international airport serving Caracas, is dangerous and corruption is rampant. Concerns include personal property theft, mugging, and "express kidnapping" in which individuals are taken to make purchases or to withdraw as much money as possible from ATMs, often at gunpoint. The Embassy has received multiple, credible reports that individuals with what appear to be official uniforms or other credentials are involved in facilitating or perpetrating these crimes. For this reason, American citizen travelers should be wary of all strangers, even those in official uniform or carrying official identification. There are also known drug trafficking groups working from the airport. Travelers should not accept packages from any persons and should keep their luggage with them at all times.

Because of the frequency of robberies at gunpoint, travelers are encouraged to arrive during daylight hours if at all possible. If not, travelers should use extra care both within and outside of the airport. The Embassy strongly advises that all arriving passengers make advance plans for transportation from the airport to their place of lodging. If possible, travelers should arrange to be picked up at the airport by someone who is known to them. The Embassy has received frequent reports recently of armed robberies in taxicabs going to and from the airport at Maiquetía. There is no foolproof method of knowing whether a taxi driver at the airport is reliable. The fact that a taxi driver presents a credential or drives an automobile with official taxi license plates marked "libre" is no longer an indication of reliability. Incidents of taxi drivers in Caracas overcharging, robbing, and injuring passengers are common. Travelers should take care to use radio-dispatched taxis or those from reputable hotels. Travelers should call a 24-hour radio-dispatched taxi service from a public phone lobby or ask hotel, restaurant, or airline representatives to contact a licensed cab company for them....

Harassment of U.S. citizens by pro-government groups, Venezuelan airport authorities, and some segments of the police occurs but is quite limited. Venezuela's most senior leaders, including President Chavez, regularly express anti-American sentiment. The Venezuelan government's rhetoric against the U.S. government, as well as American culture and institutions, is slowly affecting attitudes in what used to be one of the most pro-American countries in the hemisphere....

U.S. Department of State, Bureau of Consular Affairs, Consular Information Sheet-Venezuela, dated November 1, 2007.

Based on the career disruption that the applicant's spouse would encounter were she to reside in Venezuela for a two-year period with the applicant, the concerns outlined above regarding the language barrier that the applicant's spouse would face, financial hardship in light of the fact that the applicant's spouse has a student loan principal balance of over \$185,000, as confirmed by Wells Fargo in a letter dated August 11, 2006, and the problematic country conditions in Venezuela, the AAO concurs with the director that the applicant's U.S. citizen spouse would experience exceptional hardship were she to accompany the applicant to Venezuela 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 Venezuela. In this case, counsel contends and documents that the applicant's spouse will experience emotional, psychological, professional and financial hardship were the applicant to fulfill his two-year foreign residency requirement in Venezuela while his spouse remained in the United States. As stated by counsel,

...Because Venezuela is so extremely dangerous, it is a certainty that [redacted] [the applicant's] U.S. citizen wife [redacted] would suffer exceptionally serious psychological distress if her husband returned to Venezuela for two years, even if he managed to escape major harm....

In addition, it is indisputable from the evidence that [redacted] would face an exceptionally high risk of physical injury or death in Venezuela, due to the extremely high crime rate, due to the extremely volatile political situation, due to his close ties to the United States, and due to his status as an educated professional. It is indisputable that if he were to be killed or seriously injured, it would inflict exceptional hardships on his wife... Moreover, harm to [redacted] himself is relevant to the extent it causes hardships for his wife.

Finally, the evidence establishes that there is an exceptional risk that [redacted] would not be granted an exit visa to return to the United States, so the two-year residence requirement might become indeterminate or even permanent. This obviously would inflict exceptional suffering on his wife....

Supplemental Brief in Support of Appeal, dated November 19, 2007.

The applicant echoes the sentiments outlined by counsel. As stated by the applicant,

...If I had to fulfill this requirement going back to Venezuela for two years leaving Jill [the applicant's spouse] behind, this would represent an extreme sacrifice for both of us, especially her. In the last one and a half year we have become best friends, we share every interest and we depend on each other; we work together being involved in several research projects. Another reason would be the fact that the next few years would represent the beginning of her career as an attending surgeon, the time in which she would build her practice....

If I had to go back to Venezuela, with all the political changes going on there towards 'The Socialism of the 21st Century' as president Chavez refers to it, in which government's control over all the activities of the country and its citizens has increased and will continue increasing, Jill would find [it] difficult to visit me and probably it would likely be difficult for me to come and visit her. Recently, it has been an unofficial practice in Venezuela, to discriminate against those who think differently, including the practice of denying identification documents like passports. Crime and violence are not uncommon in Tachira state and while I am there Jill would be always worried of my safety. This would divert her from concentrating in her work....

Affidavit of [REDACTED], dated December 12, 2006, at 2.

[REDACTED] Ph.D., LCSW corroborates the concerns outlined by counsel and the applicant with respect to the emotional and psychological hardship that the applicant's spouse would experience were the applicant to reside abroad for a two-year period. As [REDACTED] states,

[REDACTED] [the applicant's spouse] states that she is feeling incredible pain about the possibility that her husband would be forced to return to Venezuela for two years....

[REDACTED] indicated that the strain on her during on-going studying and medical practice would be terrible without [REDACTED] [the applicant] to support her emotionally... She has been terribly isolated and lonely as she prepares to become one of only a few female Board Certified Colorectal Surgeons in the United States. She believes that her future medical practice will suffer as she attempts to deal with fear for her husband's safety and the loss of his day-to-day support and understanding....

[REDACTED] extreme hardship will be further exacerbated by constant fear and worry about her husband's safety if he were to return to Venezuela. His home is

approximately 16 miles from the Colombian border which has been deemed a very dangerous area by the US Department of State. Several family members have already directly experienced threats, violence, and/or been assaulted. [REDACTED] spoke passionately about experiencing panic and feeling helpless when she considers him being in Venezuela and not being able to call to reach him to reassure herself about his well being.

Psychological Evaluation from [REDACTED], Ph.D., LCSW, dated August 17, 2006.

[REDACTED] further states,

...since [REDACTED] [the applicant's spouse] and I [REDACTED] [the applicant] have been relatively inseparable since the onset of their relationship, they have had many opportunities to discuss their family histories, upbringing, education, successes and difficulties. [REDACTED] has learned of the dangers and risks for her husband should he be prevented from remaining here with her and have to return to Venezuela. The knowledge that he has had family members threatened, violated, assaulted and abused presents a terrible situation for her consideration if her husband is forced to return to Venezuela. She, then, would be at risk of developing a diagnosis, such as Depression, Anxiety or Post-Traumatic Stress Disorder. Psychiatric diagnoses typically cause significant distress and/or impairment in one's social, occupational and other important areas of functioning....

...Dr. Genua reported feeling very isolated and alone before meeting [REDACTED]. She is one of only a few female physicians in her chosen specialty.... As a result of the demands of her chose [sic] profession she moved away from her family support system and has had limited time to develop friendships and additional supports in South Florida. When she met [REDACTED] and began their relationship, he became her support system, even assisting her extensively after her own emergency surgery in December 2005. A forced separation from him could activate other depressive symptoms like sleep and appetite disturbances and obsessive worry about his safety....

...Since learning that the CIS would probably deny [REDACTED] application for a waiver, [REDACTED] has been dealing with anxiety related to the unknown outcome of the application process....

...If separated from [REDACTED], [REDACTED] could develop symptoms of PTSD (a specific type of anxiety disorder) just by imagining that [REDACTED] is experiencing the same kind of threats, violence and abuse that his family members have already experienced. PTSD can develop if one believes that the events have happened or might be happening just as easily as having witnessed them directly....

The development of any one of these diagnoses or any other would constitute an extreme hardship to [REDACTED]. Any psychiatric diagnosis requiring treatment would have to be reported to the Florida Department of Health, Medical Quality Assurance. The Department's common response to any physician with a psychiatric diagnosis is to suspend his/or license to practice pending successful treatment and the provision of proof to the relevant Licensure Board that the physician has recovered and is able to perform his/her job...

Addendum to Evaluation from [REDACTED] Ph.D., LCSW, dated March 26, 2007.

Due to the fears and anxieties experienced by the applicant's spouse with respect to her husband's anticipated return to Venezuela, her dependence on the applicant for her own emotional and psychological well being, her continued work in the highly specialized and competitive field of colorectal surgery and the likely suspension of her medical license and her inability to practice medicine were she to seek psychiatric treatment due to anxiety related to her spouse's two-year physical absence, the AAO finds that the applicant's departure for a two-year period would cause the applicant's spouse emotional, psychological and financial hardship that would be significantly beyond that normally suffered upon the temporary separation of families.

As such, upon review of the totality of the circumstances in the present case, the AAO finds the evidence in the record establishes that the applicant's spouse would experience exceptional hardship were she to relocate to Venezuela and in the alternative, were she 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 met his 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 DOS. Accordingly, this matter will be remanded to the director so that she may request a DOS recommendation under 22 C.F.R. § 514. If the DOS recommends that the application be approved, the application must be approved. If, however, the DOS recommends that the application not be approved, the application will be re-denied with no appeal.

ORDER: 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.