



U.S. Citizenship  
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FILE:

Office: NEBRASKA SERVICE CENTER

Date: JAN 25 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.

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 Russia who was admitted to the United States in J1 nonimmigrant exchange status on August 4, 2004 to participate in a program funded by the U.S. Department of State. 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 and step-children would suffer exceptional hardship if they moved to Russia temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled her two-year foreign residence requirement in Russia.

The director determined that the applicant failed to establish that her spouse and step-children would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Russia. *Director's Decision*, dated January 30, 2007. The application was denied accordingly.

In support of the appeal, the applicant provides a brief detailing the hardship waiver claims; numerous articles regarding country conditions in Russia; letters from the applicant's step-daughters; a letter from [REDACTED], Social Worker, Foster Care and Adoption Unit, Fairfax County, Virginia, dated January 11, 2000, and a psychological evaluation from [REDACTED], Licensed Clinical Psychologist, dated July 5, 1999, regarding the applicant's step-daughter, [REDACTED] two letters sent to the applicant's spouse regarding job prospects in Russia; case law and summaries with respect to J-1 waivers; the applicant's spouse's resume and evidence of his area of expertise, in the form of copies of numerous publications and abstracts. The entire record was reviewed and 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, 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(I): 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 and/or two step-daughters, born in August 1996, and born in June 1994, would experience exceptional hardship if they resided in Russia for two years with the applicant.<sup>1</sup> To support this contention, the applicant’s spouse states the following:

...In order for this to happen, I would need to legally take the girls with me out of the country for two years. Based on our family’s history, I expect that my ex-wife would take such an opportunity to again open up a custody case in an attempt to block such action...it would still be expensive to again go to court again over custody. In the last 5 years, I have spent somewhere in the neighborhood of \$40,000 on court with my ex-wife. I could not financially handle another custody battle...

Or, if I won in court and I was able to take the girls abroad with us, it would still be hard on them and me. None of the three of us speak or read any Russian. I would need to somehow manage to get a job...Even if I was able to get a job offer...obtaining work permission for me as an American Citizen would present another huge hurdle...

Another potential difficulty is my training. I have a doctoral degree in Nuclear Engineering. I do not know how the United States State Department would feel about a Nuclear Scientist doing research in plasma physics in Russia...

*Declaration of* [REDACTED] dated July 7, 2006.

The applicant supports the statements made by her spouse. As stated by the applicant,

...If the family moves to Russia for two years, the language and cultural barriers may leave my husband and the children helpless in navigating through normal

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<sup>1</sup> The Form I-612, Application to Waive Foreign Residence Requirement, indicates that the applicant’s adopted son, [REDACTED], born in August 1988, is also a step-child to the applicant and hardship to him should be considered when evaluating the waiver application. However, the applicant’s spouse’s statements makes no reference to any hardship that [REDACTED] would encounter were the applicant unable to obtain a waiver of the two-year home residency requirement. In fact, in the applicant’s spouse’s statement detailing hardship, dated July 7, 2006, he only references hardship with respect to him and “the girls...” with respect to the applicant’s two-year home residency requirement. *Declaration of Dr.* [REDACTED] dated July 7, 2006. As such, it has not been established that hardship to the applicant’s spouse’s adopted son, [REDACTED], should be considered with respect to this appeal.

every day life without additional help. Being removed from one's own country, friends, family, familiar customs and traditions, education systems, etc., can lead to recurrence of severe emotional problems and depressions which the children experienced previously during many traumatic life experiences (i.e. divorce, abusive relationship with biological family, adoption and elimination of biological family's rights). Moreover, it is unclear what kind of education the children, who do not speak the Russian language, could get.

My husband is considered to be one of the unique specialists in the world in the field of Pulsed Plasma Physics and its application to processing advanced materials...He does not want to aid the wealth and development of any other country...

*Declaration of* [REDACTED] dated October 27, 2006.

To begin, the applicant has not established that she and/or her spouse would be unable to obtain gainful employment in Russia. The record indicates that the applicant's spouse is currently employed as an Assistant Professor of Mathematics. The applicant's spouse's concerns about obtaining employment in his area of expertise, namely Nuclear Engineering, while in Russia do not appear to be relevant to the discussion regarding economic hardship as the applicant's spouse would likely be able to obtain employment in the area of mathematics. No evidence to the contrary has been provided.

Also, while the applicant's spouse states that he has had medical problems in the past with respect to ankle reconstruction surgery and its complications, no letter from a medical expert has been provided to explain the applicant's spouse's current medical prognosis, the gravity of the situation, its short and long-term treatment plans, and the ramifications of relocating abroad for two years as they relate to his medical condition and continued care.

Even though it has not been established that the applicant's spouse would suffer exceptional hardship were he to reside in Russia for a two-year period, the AAO does find that the hardship the applicant's step-daughters would encounter were they to relocate to Russia 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 step-daughters are integrated into the U.S. lifestyle and educational system. They have never lived outside the United States and they do not speak, read or write in Russian. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). Though *Matter of Kao and Lin* is a finding of extreme hardship related to a waiver of inadmissibility, the AAO finds the reasoning to be persuasive in this case due to the similar fact pattern. To uproot the applicant's step-daughters at this stage of their education and social development and relocate them to a Russian-only environment would be a significant disruption that would constitute exceptional hardship.

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

...My daughters, [REDACTED] and [REDACTED] are 9 and 11 years old, respectively. It would place a tremendous emotional hardship on them if [REDACTED] [the applicant] were to leave the country for two years. They have already been through many very difficult events in their lives, despite their tender ages, and I hope to spare them from additional emotional angst.

Both girls are adopted. They are half sisters, born of the same mother... They came into my care in February 1997 through a foster care agency.. [REDACTED]'s biological parents...were physically abusive, and [REDACTED] suffered documented physical abuse.. [REDACTED] also gave some indication of having been sexually molested...

My ex-wife has proceeded to serve as an awful female role model for them...After I met [REDACTED] and we decided to marry, we did so in such a way to show the girls the right way that marriages should occur. We did not officially live together until after the marriage ceremony, and we certainly did not conceive any children out of wedlock...

...[T]he two girls have latched on to [REDACTED]'s attention as a substitute 'good stepmother' in the absence of real attention from their adoptive mother.

The girls stayed with my ex-wife in the summer of 2005, and finally they moved to Wilmington, Ohio with [REDACTED] and me in August of 2005. Since that time, the girls and [REDACTED] have bonded strongly. They have fun together, but they also work hard together. She helps them with homework, is getting trained currently to be their girl scout leader, teaches them how to do household chores, helps them learn how to cook, gets up with them in the morning to get them ready for school and she babysits them after school...All told, we are working hard to establish a comfortable, happy household for the four of us. So far, it is going quite well. It would rip apart this happy household if [REDACTED] was forced to leave. It would cause yet another upheaval in the lives of two little girls...

[REDACTED]'s arrival into my life changed everything. She gave me confidence in myself once again...She gave me an extra set of hands to help lessen my burdens, and a set of ears to listen to me and help with my problems...I began to enjoy life again. She has etched her mark indelibly upon my soul, and I cannot imagine being without her for two years...

...If she had to leave the country for two years, I would have to look for babysitter and cleaning help so I could continue to work overtime to be able to support and my two daughters...

In summary, if [redacted] went back to Russia without the rest of the family and left the three of us here alone, it would place tremendous emotional and financial burden on our family. My daughters have already suffered through so many difficulties in their lives, that I dread the idea of them being made to suffer through her departure. Myself, I have also suffered, and cannot imagine being alone again after finally finding my life from halfway around the world...

*Supra*, at 1-5.

The applicant has not provided any documentation from a mental health professional that describes the ramifications that the applicant's spouse and/or step-daughters would experience were they to be separated from the applicant for two years. Moreover, no documentation has been provided that corroborates that the applicant will not be able to obtain gainful employment in Russia, thereby assisting the applicant's spouse with household and child-care costs during her two-year absence. Finally, it has not been corroborated that the applicant's spouse currently needs the applicant's physical assistance with respect to his medical conditions. As such, the AAO finds that the applicant has failed to establish that her spouse and step-daughters would encounter hardship that would go significantly beyond that normally suffered upon the temporary relocation based on a spouse's two-year home foreign residency requirement.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse and step-daughters will face exceptional hardship if the applicant's waiver request is denied. Although the AAO finds that the applicant has established that her step-daughters would suffer exceptional hardship if they relocated to Russia with the applicant for the requisite two-year period, the applicant has failed to establish that her spouse and/or step-daughters would suffer exceptional hardship were she to relocate to Russia while they remained in the United States.

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.