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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H3

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

JUL 28 2008

IN RE:

[Redacted]

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, California 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 Honduras who obtained J-1 nonimmigrant exchange status on August 15, 1996 to participate in a program funded by the United States Agency for International Development. 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 children, born in February 2002 and February 2004, would suffer exceptional hardship if they moved to Honduras temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Honduras.

The director determined that the applicant failed to establish that her U.S. citizen spouse and/or children would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Honduras. *Director's Decision*, dated February 25, 2008. The application was denied accordingly.

In support of the appeal, the applicant submits Form I-290B, Notice of Appeal (Form I-290B), and medical documentation with respect to the applicant's spouse and children. 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 U.S. citizen spouse and/or children would experience exceptional hardship if they resided in Honduras for two years with the applicant. To support this contention, the applicant's spouse states the following:

...it should be noted that my wife's country [Honduras] is among the poorest, it will be impossible for this US Citizen to be able to find employment to support for my family, for our children to receive proper education and medical services in a country that is still recuperating from natural disaster....

Brief from

No documentation has been provided regarding the economic situation in Honduras, to substantiate the claims made by the applicant's spouse that he and his children will suffer exceptional financial hardship were they to reside in Honduras. Moreover, the applicant's spouse references the problematic country conditions in Honduras, but does not substantiate the claims with any corroborating documentation to evidence the hardship he and his children would encounter in Honduras. 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)). Thus, the AAO finds that the applicant has not established that her U.S. citizen spouse and/or children would encounter exceptional hardship were they to temporarily relocate to Honduras based on the applicant's spouse's two-year foreign residency requirement.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse and/or children would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in Honduras. As stated by [REDACTED] Clinical Psychologist, in an evaluation conducted with the applicant's youngest child, [REDACTED]

...This Clinical Summary is related to the above mentioned patient [REDACTED] the applicant's child] who has been under my care...after being referred by Dr. [REDACTED] his primary pediatrician in order to have a psychological evaluation and receive treatment....

[REDACTED] is presenting several symptoms that are associated with Separation Anxiety. Even though his parents have been trying to keep the situation away from the children [REDACTED] has been perceiving some type of unfamiliar reactions and ever since he has become more attached to his mother to the point that he cries every day when she leaves home to go to work. He wakes up in the middle of the night screaming and he only goes back to sleep when he stays with his mom in her bed....

...it is my clinical opinion that removing this child from his mother will have a detrimental effect on him and will have a negative impact on his emotional stability and human development in the future....

*Clinical Summary prepared by
Services, Inc., dated September 17, 2007.*

Licensed Clinical Psychologist, Absolute Psychological

A comparable clinical summary has been provided in regards to the applicant's oldest child, [REDACTED]
As [REDACTED]

...By assessing Geovany behaviors and reactions, I can identify as the main stressor the fact that his mother is currently going through a stressful immigration process, which has lead to severe family distress and discomfort. It is my clinical opinion that removing this child from his mother will have a detrimental effect on him and will have a negative impact on his emotional stability and human development in the future....

*Clinical Summary prepared by
Inc., dated September 17, 2007.*

Licensed Clinical Psychologist, Absolute Psychological Services,

Extensive medical documentation to corroborate the above statements with respect to the applicant's children has been provided. As such, the AAO concurs with the applicant that separating two young children from their mother would cause the children exceptional emotional and psychological hardship that would be significantly beyond that normally suffered upon the temporary separation of families.¹

The record, reviewed in its entirety, does not support a finding that the applicant's spouse and/or children will face exceptional hardship if the applicant's waiver request is denied. While it has been established that the applicant's U.S. citizen children will suffer exceptional hardship were they to remain in the United States while the applicant relocates to Honduras for two years, the applicant has failed to establish that her U.S. citizen children would suffer exceptional hardship if they moved to Honduras with the applicant for the requisite two-year period. The record demonstrates that the applicant's spouse and children face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse temporarily relocates abroad based on a foreign residence requirement.

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. The waiver application is denied.

¹ As exceptional hardship has been found with respect to the applicant's children remaining in the United States while the applicant relocates abroad for a two-year period, the AAO does not deem it necessary to evaluate whether the applicant's spouse would also suffer exceptional hardship were he to remain in the United States while the applicant relocates to Honduras for a two-year period.