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U.S. Citizenship
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Services

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FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

MAR 26

IN RE:

[Redacted]

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:

[Redacted]

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 Ukraine who was admitted to the United States in J-1 nonimmigrant exchange status in August 1994 to participate in a program funded by the U.S. Information Agency. 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 foreign residence requirement, based on the claim that his U.S. citizen spouse would suffer exceptional hardship if she moved to Ukraine 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 Ukraine.

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 Ukraine. *Director's Decision*, dated July 16, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides the following documentation: a brief, dated September 4, 2007; evidence that the appeal was timely filed; change of address notification letters sent to USCIS by both counsel and the applicant; a letter from the applicant's spouse, dated August 25, 2007; two decisions issued by the AAO; case law and a copy of an article with respect to hardship waivers; and medical documentation pertaining to the applicant's spouse. In addition, on November 19, 2007, counsel sent a correction notice regarding the appeal brief to the AAO. 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).

To begin, the record contains references to the hardship that the applicant's spouse's host family in the United States, the [REDACTED]s, would suffer were the applicant's waiver request denied. While the AAO sympathizes with the [REDACTED]s, and more specifically, their daughter Jill, and their desire to have the applicant remain in the United States, they are not qualifying relatives for purposes of section 212(e) of the Act, which provides that a waiver is applicable solely where the applicant establishes exceptional hardship to his or her citizen or lawfully resident spouse or child. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant and his host family cannot be considered, except as it may affect the applicant's spouse. It has not been established that the applicant's spouse will suffer exceptional hardship due to the applicant's temporary absence from the [REDACTED]s lives.

The first step required to obtain a waiver is to establish that the applicant's spouse would experience exceptional hardship if she resided in Ukraine for two years with the applicant. To support the contention that the applicant's spouse would suffer exceptional hardship were he to relocate to Ukraine for two years with the applicant, the applicant states the following:

...I learned that [REDACTED] [the applicant's spouse] has a condition related to asthma, severe allergies and allergic reactions, and she has had problems with these health conditions since her childhood. I learned that [REDACTED] may experience symptoms of her condition under a variety of circumstances, the chief of which is allergies caused by a wide range of environmental factors and stress. [REDACTED] can experience symptoms of this condition in weather extremes, like cold and humidity, and also under situations where she is psychologically stressed. One of the most serious consequences of her condition is going into anaphylactic shock, which has happened in the past. While she lived in California, she sought medical treatment for her condition from local doctors. In 2000, she was seen by [REDACTED], seeking treatment for severe allergies, and in 2001, [REDACTED] was treated by [REDACTED]. Even in a young and otherwise healthy person, anaphylactic shock can lead quickly to death if adequate emergency care is not immediately available. It is a very serious, life-threatening emergency.

...She has had to take off work because of her sickness, and on one occasion, she developed sinus clots and started having very painful headaches.... If [REDACTED] had to go to Ukraine, she would have a high probability of experiencing the symptoms of her condition and would have to deal with this problem without having medical care options comparable to that of the United States or other Western countries. Medical care in Ukraine is state-sponsored, and thus, it is severely under funded

and the quality of health professionals is often not comparable to that of Western countries. The majority of small and medium-sized hospitals in Ukraine are not equipped to handle serious medical emergencies because the modern medical equipment used by health professionals in the United States is unaffordable to Ukrainian health facilities, and one has to go to large cities where there are larger hospitals with proper equipment. One must often wait in line for days to receive proper care.

Also, the methods used to treat many conditions are very rudimentary in most of the country. If [REDACTED] experienced an emergency requiring her to be treated in the emergency room in one of the Ukrainian hospitals, it is highly unlikely that there would be an English-speaking doctor or even interpreter that could help the doctors figure out what care [REDACTED] requires. The possibility of [REDACTED] experiencing a medical emergency without having someone translate her symptoms and her medical history could put her health and even maybe her life in danger.

...Due to a humid climate in Ukraine and the presence of plants around cities and residential areas, it is likely [REDACTED] will experience allergies and a variety of asthmatic symptoms, which she usually does when we move or go to a different place here in the United States. More important though, I am concerned with the winters that have been extremely long and harsh in Ukraine in recent years....

Even though [REDACTED] has lived outside her parents' home since she was 18, [REDACTED] has always been living in close proximity to her family and close friends. While she lived in Utah, [REDACTED]'s older sister and her husband lived just a few minutes away and interacted with [REDACTED] on a daily basis. [REDACTED] would always go home to Arizona for holidays and family gatherings due to the relatively short distance between her residence in Utah and her parents' home in Arizona. [REDACTED] has never lived outside the United States and she never lived away from her family for prolonged periods of time. Going to Ukraine would require her to separate herself from close contact with her family and close friends for two years. [REDACTED] would not be able to come back to the United States more than once a year, due to transportation costs, which run a few thousand dollars.... In addition, due to the poor telecommunications system in Ukraine at this time, it is quite expensive to make international calls to the United States from Ukraine and to Ukraine from the United States. This would significantly limit [REDACTED]'s ability to communicate with her family in the United States on a regular basis and have the support she needs to get through the hard times that she would surely experience in Ukraine.

...everything [REDACTED] would experience in Ukraine will be different and alien to her. One of the main culture shocks will be a different language. Unlike other western countries, such as European countries, where much of the population has at least a basic knowledge of conversational English, Ukraine has its own language and the

people who live there usually speak Ukrainian and Russian. They do not have even a basic knowledge of English. Because [REDACTED] does not even have a basic understanding of Russian or Ukrainian, she would have a terrible time doing even the most basic of things, such as buying groceries or navigating her way around the city....

...One of the more long-term consequences of [REDACTED] having to move to Ukraine would be the loss of an opportunity to obtain an education.... [REDACTED] is planning to start at Shoreline Community College.... Currently, there are no internationally recognized college programs in Ukraine that are tailored for native speakers of English, and therefore [REDACTED] would not be able to go to school in Ukraine because she does not speak Russian or Ukrainian....

...If [REDACTED] went to Ukraine with me, she would have to quit her job and both of us would have to rely entirely on our insignificant savings to pay the expenses associated with moving to Ukraine and living there for two years.... [REDACTED] does not speak Ukrainian or Russian, so she will be unable to find employment and help with living expenses. She would have to rely on me to support her for two years. Due to the very poor economic situation in Ukraine, it is very likely that I would be unable to find good employment and support both [REDACTED] and myself there.... Right now the average salary in Ukraine is between \$80 and \$100 U.S. a month. At the same time, the living expenses approach that of western countries.... Most people live below the poverty line.... Hot water and electricity are often unavailable and many people exist on very poor diets....

Affidavit of [REDACTED], dated February 21, 2007.

Counsel has provided numerous articles corroborating the statements above, namely the applicant's spouse's medical condition and the problematic country conditions in Ukraine. In addition, the Consular Information Sheet for Ukraine, released by the U.S. Department of State, Bureau of Consular Affairs, states, in pertinent part, the following regarding country conditions in Ukraine:

Ukraine is undergoing a significant economic, political, and social transformation, and income disparities have grown sharply. As a result, foreign visitors may be perceived as wealthy targets for criminals. Americans often stand out in Ukraine, and are therefore more likely to be targeted than in Western European countries, where incomes are higher and Americans may blend in better.

Most street crime ranges from various scams, simple pickpocketing, purse snatching and theft of personal items from parked cars, to mugging, armed robbery or the drugging of unsuspecting victims at nightspots and bars (where they are then robbed). Cases of assaults in apartment building corridors, elevators and stairwells, as well as armed break-

ins and crimes involving small caliber firearms have also been reported. Please see the Embassy's web site for additional security information for Americans at http://kyiv.usembassy.gov/amcit_security_eng.html.

A commonly reported scam in Kyiv is "The Wallet Scam," which involves a person dropping a wallet or a packet of money near a potential victim. After the victim picks up the wallet and attempts to return it to the individual who "dropped" it, the perpetrator then claims that the wallet is missing money which the victim stole. The perpetrator either threatens to call the police if the victim does not pay, or asks the victim to show his or her wallet to the perpetrator to ensure that the victim did not take any money. When the victim produces his or her wallet, the perpetrator grabs the money and flees. Another variant involves a second person who claims to be a police officer – who is of course involved in the crime – who approaches the victim after the wallet has been picked-up. This second person also asks to see the wallet, grabbing the money and fleeing or, through sleight-of-hand, stealing the victim's money.

While most travelers do not encounter problems with crime in Ukraine, there has been an increase in the number of hate crimes directed at ethnic and religious minorities. Many of these incidents are conducted by "skinheads" or neo-Nazis in Kyiv, but similar crimes have also been reported throughout the country. In Kyiv these incidents have occurred without provocation in prominent downtown areas commonly frequented by tourists. While the majority of people targeted have been of Asian, African, or other non-European descent, all travelers should exercise caution. In addition to incidents of assault, persons of African or Asian heritage may be subject to various types of harassment, such as being stopped on the street by both civilians and law enforcement officials. Individuals belonging to religious minorities have also been harassed and assaulted in Kyiv and throughout Ukraine.

Credit card and ATM fraud is widespread. Ukraine operates as a cash economy, and money scams are common. The Embassy strongly recommends that visitors and permanent residents of Ukraine refrain from using credit cards or ATM cards except at major international establishments.

Burglaries of apartments and vehicles represent a significant threat to long-term residents. Although few cars are actually stolen, primarily because of increased use of alarm systems and security wheel locks, vehicular break-ins and vehicular vandalism are common.

Ukraine lacks reliable tourist and travel services for foreign victims of crime. Transferring funds from the United States, replacing stolen traveler's checks or airline tickets, or canceling credit cards can be difficult and time consuming. There are few safe low-cost lodgings, such as youth hostels. Public facilities in Ukraine are generally not equipped to accommodate persons with physical disabilities.

Over the past several years, the Embassy has received a number of reports of harassment and intimidation directed against foreign businesspersons and interests. While these reports have become much less frequent in recent years, they have not ended entirely. Reported incidents range from physical threats (possibly motivated by rival commercial interests tied to organized crime), to local government entities engaging in such practices as arbitrary termination or amendment of business licenses, dilution of corporate stock to diminish U.S. investor interest, delays of payment or delivery of goods, and arbitrary "inspections" by tax, safety or other officials that appear designed to harm the business rather than a genuine attempt at good governance. American business entities are encouraged to read the Corruption, Money Laundering and Organized Crime section of the 2007 Crime Report for Ukraine at http://kyiv.usembassy.gov/amcit_crimerreport_eng.html. American businesses and other private sector organizations are also encouraged to read the most recent Overseas Security Advisory Council (OSAC) Annual Crime and Safety Report for Ukraine at <https://www.osac.gov/Regions/country.cfm?country=42>.

Computer fraud is also becoming more common in Ukraine. Internet scams appear to be on the rise. The Embassy suggests refraining from wiring money unless the recipient is well-known and the purpose of business is clear. American citizens have reported transferring money to Ukraine to pay for goods purchased from residents of Ukraine via online auction sites, but never receiving the goods in return. The Embassy regularly receives complaints from Americans regarding scams involving marriage and dating services. Numerous Americans have lost money to agencies and individuals that claimed they could arrange for student or fiancée visas to the U.S. Additional information is available on our web site in a document titled "Marriage Brokers" at http://kyiv.usembassy.gov/amcit_marriage_eng.html and on the Department of State's web site under [Ukraine: Internet and Other Fraud Schemes](#).

As in many countries around the world, counterfeit and pirated goods are widely available in Ukraine. Transactions involving such products may be illegal under local law. In addition, bringing them back to the United States may result in forfeitures and/or fines. More information on this serious problem is available at <http://www.cybercrime.gov/18usc2320.htm>.

In December 2005, Ukraine reported the first cases of H5N1 ("avian influenza," "avian flu," "bird flu," or "chicken flu") among birds in Crimea. Further outbreaks followed in 2006. On January 18, 2008, another outbreak of the H5N1 avian influenza virus was detected at a poultry farm in the Krasnogvardiyskyi Rayon in Crimea. There are no registered human cases of H5N1 in Ukraine. For detailed information on H5N1, please review the [Avian Influenza Fact Sheet](#).

The U.S. Embassy maintains a list of hospitals and clinics with some English-speaking staff. Many facilities have only limited English speakers. There are no hospitals in

Ukraine that provide a level of medical care equal to that found in American hospitals, or which accept American health insurance plans for payment (see the section on Medical Insurance below). Some facilities are adequate for basic services, and basic medical supplies are available. However, travelers requiring prescription medicine should bring their own. Elderly travelers and those with existing health problems may be at risk due to inadequate medical facilities. When a patient is hospitalized, the patient, relative, or acquaintance must supply bandages, medication, and food. The Embassy recommends that ill or infirm persons not travel to Ukraine. The Embassy also recommends that travelers obtain private medical evacuation insurance prior to traveling to Ukraine.

Medical evacuation remains the best way to secure western medical care. This option, however, is very expensive and could take several hours or more to arrange. Travelers may wish to purchase medical evacuation insurance prior to travel, or have access to substantial lines of credit to cover the cost of medical evacuation. The Consular Section of the U.S. Embassy has information on various air ambulance companies that perform medical evacuations to Europe or to the U.S. Serious medical problems requiring hospitalization and/or medical evacuation to other European countries can cost from \$25,000 to \$50,000, and to the U.S. as much as \$70,000 or more. More information can be found on the U.S. Embassy's web site in the document "Medical Services in Kyiv" at http://usembassy.kiev.ua/amcit_medical_serv_eng.html.

Please note that while the Embassy can help American travelers and their families make to contact with a medical evacuation service, the U.S. Government cannot pay for medical evacuation. Travelers should make sure they have medical evacuation insurance, which is available from many private companies, or have funds available for evacuation, should the need arise.

Consular Information Sheet-Ukraine, released by the U.S. Department of State, Bureau of Consular Affairs, dated February 15, 2008.

Based on the above-referenced country conditions in Ukraine, the concerns outlined above regarding the applicant's spouse's unfamiliarity with the culture and language in Ukraine, the applicant's spouse's serious medical condition and the substandard health care in Ukraine, the prolonged separation from her family and the academic disruption, the AAO concludes that the applicant's U.S. citizen spouse would experience exceptional hardship were she to accompany the applicant to Ukraine 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 Ukraine. With respect to the hardship that the applicant's spouse would encounter were she to remain in the United States while the applicant returns to Ukraine for the requisite two-year period, the applicant's spouse states the following:

...The USCIS states that I was not able to provide any direct evidence of emotional hardship and depression. The USCIS makes this conclusion based on there being no evidence that I am currently on medication or seeking a psychiatrist. Making an inference that I am not depressed because I am not on Prozac is simply unfounded. My husband is still here with me, but I am losing sleep and under constant stress because our lives are in such disarray because of him having to go to the Ukraine.... The fact that I am not currently on any psychiatric medication at this time or not seeing a 'shrink', does not mean that I am not experiencing a 'considerable or exorbitant' amount of anguish and stress. On the contrary, I do experience both anguish and considerable amount of stress, and so does my family. I feel like everything in our life is coming apart.... I have always felt that seeking help from medication or counseling should be the last option, and I have always thought comfort through prayer and facing my problems and seek solutions to them. If I knew that the only way to substantiate my true distress was by taking powerful psychiatric medication or seeking professional help, I would have done so.... If I had to separate from my husband I would certainly experience a depression and overwhelming stress....

Letter from [REDACTED], dated August 25, 2007.

The applicant further elaborates on the hardships his spouse would encounter were she to remain in the United States while the applicant relocates abroad for a two-year period:

...One of the hardships [REDACTED] will face if I go back to Ukraine and she stays behind, is the loss of her health insurance. [REDACTED] would not be able to afford the cost of living in Seattle and would have to move back to Utah or to Arizona, where she is closer to her family and living expenses are cheaper. Health insurance is very expensive and for low-wage workers, like [REDACTED], it may take months before she finds a new job and is able to qualify for some form of health insurance. In her previous jobs at Alert Cellular and Verizon Wireless, [REDACTED] had to wait several months before she was eligible for insurance benefits. The loss of health insurance could deny her proper care in case of illness or emergency, and without an ability to go to the doctor and receive proper care, Kelley's health could be in serious danger.

Just a few days ago I lost my privilege to work, and as a consequence of the denial of the I-485 application, due to the J-1 foreign residence requirement, [REDACTED] and I have no health insurance at this time.... I had to terminate my employment due to denial of I-485 and my health benefits were suspended.

Already the result of the health insurance loss is starting to take its toll. In the last month [REDACTED] has had unexplained stomach pains and after some really bad episodes she went to see a doctor. After the doctor's examination and some tests,

the doctor did not find any obvious signs of serious disease. After the second visit and an ultrasound, the doctor still could not make a diagnosis. He suspected [REDACTED] may have endometriosis and ordered her to see a specialist. She will have to go through some very expensive and complicated procedures to determine the cause of her extreme pain, but because we have no health insurance [REDACTED] has chosen to wait and see if the pain goes away on its own.... [REDACTED] may unknowingly put herself in extreme danger by avoiding proper care when she really needs it....

According to crime statistics, Ukraine is listed between No. 8 and No. 11 of being the most violent country in the world.... Now that I am facing the possibility of going back to Ukraine, [REDACTED] is very worried about my safety there, and she is afraid that something will happen to me while I am there....

...If [REDACTED] got sick or hurt, she would be left to deal with her problems on her own. The loss of a loved one causes significant emotional and psychological trauma and depression.... Even now due to her recent health problems with the possibility of endometriosis, losing my job, and the likelihood that I will have to leave, have made her very depressed. She has lost a lot of her energy and I can see the constant stress on her face. She often lays in bed thinking about things and how our life is going to turn out. She goes to bed very early, often at six or seven, and does not get up until the next day when she goes to work. It is hard to see her go through this and I am very worried about her....

...If [REDACTED] were to remain in the United States, she would have to continue to work full-time and support herself and provide support for me in Ukraine. From a financial standpoint, [REDACTED] would not be able to go to school because she recently became a resident of Washington and she qualifies for discounted tuition in this state, but since she had to move out of Washington, she would not be eligible for resident discount in Utah or Arizona, or in any other state for that matter. With current college costs, she would have to postpone her education....

We decided that at this time it's best for [REDACTED] to continue working full-time and save up as much money as possible to pay for legal expenses and other unforeseen circumstances that may arise as a result of me having to go back to Ukraine.... [REDACTED] was hired on the condition that she works toward her college degree and obtains it within a few years. This has been the great break that [REDACTED] was waiting for. [REDACTED] finally found a way to get out of retail sales, have a job that does not require working nights and weekends, and most important, she has a chance to have a career and flexibility that will allow her to go back to school.

Although [REDACTED] has worked there for only a month, she already loves her job.... If I return to Ukraine, [REDACTED] would lose this wonderful opportunity, and have to

move out of Washington. She would have to focus on earning a living for both of us and her dream of having a fulfilling career and get an education would have to be postponed indefinitely....

Supra at 18-19, 21-23.

Based on the applicant's spouse's medical condition and the lack of health insurance due to the applicant's immigration situation, her dependence on her spouse for emotional, psychological and financial support, her fears and anxieties with respect to her husband's return to Ukraine, and her professional and academic disruption were the applicant to reside abroad, the AAO concludes that the applicant's spouse would suffer exceptional hardship were she to be separated from her spouse for a two-year period.

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 Ukraine and in the alternative, if she were 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 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 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.