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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

Office: VERMONT SERVICE CENTER

Date:

MAR 27 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.

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and 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 (WRD).

The record reflects that the applicant is a citizen of Venezuela who is 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 was last admitted to the United States in J1 nonimmigrant exchange status on September 22, 2006. The applicant's two children are U.S. citizens. The applicant presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to her children.

The director determined that the applicant failed to establish that a qualifying relative would experience exceptional hardship if she fulfilled the two-year foreign residence requirement in Venezuela and the application was denied accordingly. *Director's Decision*, dated March 16, 2007.

On appeal, the applicant asserts that the current conditions in Venezuela would cause exceptional hardship to her daughters. *Brief in Support of Appeal*, at 5, dated April 9, 2007. The applicant submitted a letter in which she asserts that her spouse's J1 waiver was granted by the U.S. Department of State on the same grounds as her case. *Letter in Support of Appeal*, at 1, dated May 28, 2007.

The record includes, but is not limited to, the applicant's brief and letter, evidence that the applicant's spouse's waiver was recommended for approval by the U.S. Department of State, WRD, and country conditions information on Venezuela. The entire record was 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 [now the Director, U.S. Department of State, Waiver Review Division (WRD), "Director"] 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, Department of Homeland Security (DHS), "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.

As noted above, the applicant submitted an updated letter in which she asserts that her spouse's J1 waiver was granted by the U.S. Department of State on the same grounds as her case. *Letter in Support of Appeal*, at 1, dated May 28, 2007. The record includes Form I-613, Request for United States Information Agency Recommendation Section 212(e) Waiver, for the applicant's spouse, which reflects that exceptional hardship was found by Citizenship and Immigration Services and that the U.S. Department of State, WRD recommended approval of the waiver. *Applicant's Spouse's Form I-613*, dated December 8, 2006. The AAO notes that the applicant's spouse's two-year requirement was subsequently waived on January 22, 2008 by the U.S. Department of Homeland Security. The AAO has reviewed the applicant's spouse's file and found that the supporting documentation provided with his I-612 waiver application, submitted on the same date as the applicant's, is nearly identical to the applicant's. It is unclear why the director came to different conclusions regarding the two applications.

Exceptional hardship to the applicant's children must be found in the event that they relocate to Venezuela or remain in the United States during the two-year period. The record includes the applicant's statement and numerous documents related to Venezuelan country conditions, both of which reflect that the applicant's nearly two-year old children will experience difficulty in several aspects of their life and the totality of these difficulties amounts to exceptional hardship. In addition, should the applicant's children remain in the United States, they would be forced to live without their mother. Considering the very young age of the children and their need for their mother at this age, the AAO finds that they would experience exceptional hardship if they remained in the United States without the applicant. The AAO finds no reason to disagree with the director's decision on the applicant's spouse's I-612 application that the children would experience exceptional hardship if the applicant were not allowed to remain 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 met her burden. The AAO notes, however, that a waiver under section 212(e) of the Act may not be approved without the favorable recommendation of the WRD. Accordingly, this matter will be remanded to the director so that he may request a WRD recommendation under 22 C.F.R. § 514. If the WRD 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 WRD recommends that the application not be approved, the application will be re-denied with no appeal.

ORDER: The appeal is sustained and the record of proceeding is remanded to the director for further action consistent with this decision.