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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **MAY 21 2008**

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, Nebraska Service Center, and was before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The matter is again before the AAO on a combined motion to reopen and reconsider. The motion will be dismissed.

The record reflects that the applicant is a native and citizen of the former Yugoslavia (which, pursuant to the U.S. Department of State, has adopted the name Serbia and Montenegro) (Serbia) who obtained J-1 nonimmigrant exchange status on September 9, 2002 to participate in graduate medical education training. 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 sought a waiver of her two-year foreign residence requirement, based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to Serbia temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Serbia.

The director determined that the applicant failed to establish that her spouse would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Serbia. *Director's Decision*, dated February 7, 2007. The application was denied accordingly.

On February 12, 2008, the AAO dismissed the appeal. Although the AAO found that the applicant had established that her spouse would experience exceptional hardship were he to relocate to Serbia with the applicant for the requisite two-year period, the applicant had failed to establish that her spouse would suffer exceptional hardship were he to remain in the United States without the applicant for the requisite two-year term. *AAO Chief's Decision*, dated February 12, 2008.

In support of the instant motion, counsel for the applicant provides a motion to reopen and reconsider, dated March 14, 2008; a copy of the applicant's U.S. citizen's child's birth certificate, confirming her birth on January 3, 2008; a letter from the applicant's spouse, dated March 13, 2008; a letter from the applicant, dated March 13, 2008; a letter from the applicant's spouse's father, dated March 12, 2008; a letter from the applicant's spouse's mother, dated March 12, 2008; information about Myelofibrosis; copies of the naturalization certificates for both the applicant's mother and father; numerous letters in support of the applicant and her spouse; information about the U.S. Embassy in Belgrade's closure on February 26, 2008; a copy of the applicant and her spouse's U.S. income tax return for 2006; and a copy of the denial notice issued to the applicant with respect to her Form I-485, Application for Adjustment of Status, dated May 26, 2006. 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.

The record contains references to the hardship that the applicant's U.S. citizen parents and in-laws would suffer were the applicant's waiver request denied. Section 212(e) of the Act 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 U.S. citizen spouse and child are the only qualifying relatives, and hardship to the applicant, her parents, and/or her in-laws cannot be considered, except as it may affect the applicant's spouse and/or child.

The first step required to obtain a waiver is to establish that the applicant's spouse would experience exceptional hardship if he resided in Serbia for two years with the applicant. The AAO, in its decision dated February 12, 2008, extensively evaluated this step and concluded that the applicant's U.S. citizen spouse would experience exceptional hardship were he to accompany the applicant to Serbia for a two-year term. As

such, hardship to the applicant's spouse were he to relocate abroad for a two-year period does not need to be re-addressed at this time.¹

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would suffer exceptional hardship if he remained in the United States during the two-year period that the applicant resides in Serbia. With respect to this step, the AAO evaluated the evidence provided and stated in its decision to deny the appeal:

To support the statements made with respect to the applicant's spouse's mental health condition, letters are provided by a social worker and his acupuncturist. Although the input of any professional is respected and valuable, the AAO notes that the submitted letters are not from specialists in the mental health field. Nor do they reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the disorders presumably suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted letters do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the findings of both the social worker and the acupuncturist speculative and diminishing their value to a determination of exceptional hardship. The record indicates that the applicant's spouse has been gainfully employed for over two decades with the same employing entity. His mental health issues and the pending departure of the applicant have clearly not hindered his ability to work full-time. As such, it has not been established that the applicant's spouse would suffer exceptional hardship were he to remain in the United States while the applicant relocated for a two-year period.

Moreover, while general information has been provided by counsel with respect to country conditions in Serbia, it has not been established that the applicant would be unable to obtain gainful employment in Serbia, thereby assisting with the maintenance of the households and the care of both her and her spouse's parents. Finally, no documentation has been provided with respect to the applicant's and her spouse's finances, or of their parents' finances, to establish the financial hardship the applicant's spouse would face without the applicant's presence in the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these

¹ The AAO notes that counsel has failed to address and/or provide any evidence to establish that the applicant's U.S. citizen child would suffer exceptional hardship were she to relocate to Serbia for a two-year period with the applicant. In fact, counsel states that "...the remaining step to obtain the waiver is to establish that the applicant's USC spouse would suffer exceptional hardship if he remained in the U.S. during the two-year period...." *Motion to Reopen and Reconsider*, dated March 14, 2008. As such, although the applicant's child is a qualifying relative for purposes of section 212(e) of the Act, the AAO is unable to evaluate the hardship to her at this time as it has not been addressed.

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)).

Supra at 6.

Based on a thorough review of the instant motion, the AAO concludes that the reservations raised by the AAO when the appeal was reviewed and adjudicated in February 2008 remain unresolved, as they have not been adequately addressed with the instant motion. Counsel provides numerous letters that describe the applicant's spouse's current state of mind with respect to his spouse's foreign residency requirement, but said letters do not objectively establish, based on professional expertise as a mental health professional, that the applicant's spouse will suffer exceptional emotional and/or psychological hardship were the applicant to relocate abroad. Assertions without corroborating evidence do not suffice to establish exceptional hardship. 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)). As such, it has not been established that the applicant's spouse will suffer emotional and/or psychological hardship due to his spouse's relocation abroad.

Moreover, with this motion, neither counsel nor the applicant address the concern raised by the AAO in its decision with respect to the applicant's ability to obtain gainful employment in Serbia, thereby assisting with the maintenance of the U.S. household. In addition, although the AAO raised questions regarding the applicant's, her spouse's and her in-law's financial viability, no corroborating evidence has been provided to establish that the applicant's spouse's household maintenance, and the care with respect to his parents and-in-laws, will cause the applicant's spouse exceptional economic hardship due to his wife's two-year absence.² A tax return for 2006 was provided with the instant motion, but no Form W-2s to reflect the specific income of the applicant and her spouse and no detailed list of income and expenses associated with the respective households referenced were provided; as such, a determination of exceptional financial hardship cannot be made.

The AAO notes that the applicant states that her spouse "...is very afraid for our lives if we would to depart to Serbia. Current political Situation is very dire..." *Letter from* [REDACTED] dated March 13, 2008. However, the U.S. Department of State has not issued any warnings, effective at this time, against U.S. citizens traveling to Serbia. As such, it has not been established that the applicant's spouse's expressed concerns relating to his spouse's return to Serbia would cause him exceptional hardship.

² The letter provided by the applicant's father state that the applicant's spouse helps "...with home projects...he helps me with jobs at my summer cottage...he lives a few blocks from us and is 15 minutes away if we need him in a hurry... [REDACTED] [the applicant's spouse] is always there to help when we need it and in a hurry..." *Letter from* [REDACTED] dated March 12, 2008. The AAO notes that despite the applicant's and her spouse's assertions to the contrary, it does not appear, based on [REDACTED]'s letter, that the applicant and/or her spouse provide financial assistance to Mr. [REDACTED]

Finally, it has not been established that the applicant's spouse would suffer exceptional hardship were his child to reside in Serbia with the applicant for a two-year period. Nothing would appear to prohibit the applicant's spouse from traveling to Serbia on a regular basis to visit his child and spouse during the applicant's temporary relocation abroad.

With respect to the applicant's child, although counsel does not address the hardship that the applicant's U.S. citizen child, a qualifying relative, would face were she to remain in the United States with her father while the applicant relocates abroad for two years, the AAO concludes that separating an infant from her mother for a two-year period would cause her exceptional emotional hardship.

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. Although it has been established that the applicant's spouse would experience exceptional hardship were he to relocate to Serbia with the applicant for the requisite two-year period, the applicant has failed to establish that her spouse would suffer exceptional hardship were he to remain in the United States without the applicant. As for the applicant's child, the AAO concedes that she would suffer exceptional hardship were she to remain in the United States while the applicant relocates abroad for a two-year period. It has not, however, been established, as it was not addressed, that the applicant's child would suffer exceptional hardship were she to relocate abroad with the applicant. Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.