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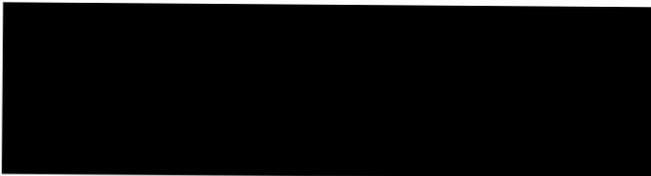
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FILE: EAC 07 048 50688 Office: CALIFORNIA SERVICE CENTER Date: **MAY 21 2001**

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:



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 applicant is a native and citizen of China. The record establishes that she was admitted to the United States in J2 nonimmigrant status, as the derivative spouse of [REDACTED] (who she divorced in April 2006), a J-1 visa holder, on August 29, 2005 and 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) due to U.S. government financing.<sup>1</sup> The applicant presently seeks a waiver of her two-year residence requirement, based on the

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<sup>1</sup> Counsel contends that as a J2 dependent, the applicant is not subject to the two-year foreign residence requirement under section 212(e) of the Act. As stated by counsel,

...Respondent, the J-2 dependent [the applicant] maintains (a) that the Immigration and Nationality Act does not impose a two-year foreign residency requirement on the dependent(s) of the principal J visa (J-1) exchange visitor...(d) that by the time this appeal is decided—or very soon thereafter—her ex-husband will have fulfilled his two-year foreign residence requirement and the Respondent will no longer be subjected to the secondary two-year residency requirement which will have terminated upon the J-1's completion of his foreign residency requirement....

According to the U.S. Department of State's Visa Waiver Office, Respondent's foreign residence requirement is satisfied the moment her ex-husband—the J-1 exchange grantee—completes his foreign residence requirement....

*Brief in Support of Appeal*, dated December 10, 2007.

Counsel provides no documentation in support of the above-referenced contentions. The AAO notes that the U.S. Department of State, on its website, confirms that a J-2 is subject to the same requirements as a J-1. *See Frequently Asked Questions*, [travel.state.gov](http://travel.state.gov), U.S. Department of State. Moreover, the instructions to the Form I-612 specifically state the following:

If a participant in an exchange program is subject to the two-year foreign residence requirement, his or her spouse and unmarried minor children who were admitted as exchange visitors...are also subject to this requirement....

*Form I-612, Application for Waiver of the Foreign Residence Requirement.*

Finally, as quoted above, section 212(e) of the Act states, in pertinent part, that a person admitted under section 101(a)(15)(J) is subject to the two-year foreign residence requirement. Section 101(a)(15)(J) of the Act specifically references the principal and the spouse and minor children accompanying or following to join. As such, pursuant to the Immigration and Nationality Act, and contrary to counsel's unsubstantiated and unsupported contentions, the AAO confirms that irrespective of the fact that the applicant has divorced the J-1 principal, and despite the fact that the

claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to China temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled her two-year foreign residence requirement in China.

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 China. *Director's Decision*, dated November 13, 2007. The application was denied accordingly.

In support of the appeal, counsel provides a brief, dated December 10, 2007; a copy of the applicant's Form I-94 Card, confirming J-2 status; a copy of the applicant's Form DS-2019; a copy of the applicant's divorce decree; evidence that the applicant's ex-husband returned to China in July 2006 to fulfill his two-year residence requirement; and a duplicate copy of the applicant's Form I-612, Application for Waiver of the Foreign Residence Requirement. 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

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applicant's ex-husband has returned to China to fulfill his two-year foreign residence requirement, the applicant remains subject to section 212(e) of the Act.

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 spouse would experience exceptional hardship if he resided in China for two years with the applicant. To support this contention, the applicant states the following:

...My U.S. citizen husband is well aware of the dangers awaiting me in China. The possibility that I may have to endure them without his protection is causing him extreme concern....

Statement from [REDACTED], dated October 21, 2006.

No corroborating documentation has been provided that explains and details what exact danger the applicant would be in were she to return to China, and in turn, what specific hardships the applicant's spouse would face based on the dangers posed to the applicant. Nor has counsel provided a statement from the applicant's spouse himself, detailing further what hardships he would face were he to reside in China for a two-year term. 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)).

The AAO does note that counsel makes a brief reference to the fact that the applicant's spouse is a federal contract employee and that he "...is not in a position to transfer his employment to the People's Republic of China...." *Supra* at 3. However, as noted above, no corroborating evidence of that employment is provided, and moreover, it has not been established, by objective evidence, that the applicant's spouse's employment would preclude him from residing in China for two years, and/or that he would be unable to make alternate employment arrangements while residing in China. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The second step required to obtain a waiver is to establish that the applicant's spouse would suffer exceptional hardship if he remained in the United States during the two-year period that the applicant resides in China. Counsel states that "...where the couple is separated by an ocean during this lengthy period—which can be well over a year, the U.S. citizen spouse certainly can suffer 'extreme hardship'..."<sup>2</sup> *Supra* at 5. Counsel has not provided any documentation from a mental health professional that describes the ramifications that the applicant's spouse would experience were he to be separated from the applicant for two years. Moreover, no documentation has been provided that establishes that the applicant's spouse would be unable to travel to China to visit the applicant on a regular basis; an unsupported assertion by counsel that the applicant's spouse would be precluded from traveling to China for security reasons does not, as stated above, constitute evidence. As such, it has not been established that the applicant's spouse would suffer

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<sup>2</sup> The AAO notes that counsel makes numerous references to the *extreme* hardship that the applicant's spouse would face due to the applicant's two-year home residency requirement. However, the AAO notes that the standard under section 212(e) of the Act for a waiver of the two-year foreign residency requirement, is *exceptional* hardship. See *Section 212(e) of the Act*.

exceptional hardship were he to reside in the United States while the applicant returns to China for two years.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face exceptional hardship if the applicant's waiver request is denied. The AAO finds that the applicant has failed to establish that her spouse would suffer exceptional hardship if he relocated to China with the applicant for the requisite two-year period and in the alternative, were her spouse to remain in the United States while the applicant returned to China for a two-year period.

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.