



U.S. Citizenship  
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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

MAY 21 2008

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 Uganda who obtained J-1 nonimmigrant exchange status in November 2000. The AAO has confirmed with the U.S. Department of State that the applicant 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) based on government funding. The applicant presently seeks a waiver of her two-year residence requirement, based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to Uganda 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 Uganda.

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 Uganda. *Director's Decision*, dated September 18, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated November 8, 2007; a letter from the American Bar Association Center on Children and the Law with respect to the applicant's J-1 training program, dated August 6, 2007; a letter from the Courts of Judicature in Uganda relating to the applicant's employment options, dated July 2, 2007; and additional information regarding country conditions in Uganda. 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 at 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(I): 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 parents 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 spouse is the only qualifying relative, and hardship to his parents and/or the applicant cannot be considered, except as it may affect the applicant's spouse.

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

...My husband is an only child to elderly parents....He is the primary care taker of his mother at our shared residence....Without my husband, my mother in law would be without care because she is retired and he takes care of her upkeep and transportation to all her doctors appointments. My husband also takes care of all the bills at our residence.

My mother-in-law suffers from Lumber spinal stenosis, and she has severe pain and numbness that restricts her normal daily activities and quality of life....Should my husband and I be forced to move to Uganda, my mother-in-law would be unable to move with us. With her condition, it would not be possible to move to Uganda as the United States is the only country where she can receive proper medication attention. As such, my husband cannot move to Uganda and leave his mother uncared for. The conditions in Uganda do not provide for handicapped people....

Since my husband bears sole responsibility to care and provide for his mother, she would be left unattended and greatly in need if my husband moved to Uganda with me. My husband would not be able to afford to put his mother in a nursing home nor would he be able to afford private nursing care to provide all the attention and assistance his mother requires....My husband would not be able to find a job in Uganda to support our family abroad as well as his mother in the United States....

In addition, there is so much political unrest in the capital city of Kampala...Kampala is an unstable environment for my family....

My husband has worked for the World Bank for eight years now and traveling to Uganda for him would mean abandoning his job. There is no guarantee that he would get a job in Uganda because the unemployment rate in Uganda is high even for Ugandan citizens. This would put an economic strain on my marriage and will cause depression for my husband....My husband would become despondent and will have to seek professional help, which is not available in Uganda.

Uganda has a high HIV/AIDS rate and some of it is caused due to the high unsanitary conditions in the hospitals. I would not like to expose my family to such harsh conditions....

My husband's entire family resides in the United States. He does not have any family in Uganda. It would cause him great and exceptional hardship to make him choose between leaving his family, especially his ill mother, to live with me in Uganda or leaving me to remain in the United States....

*Statement from* [REDACTED], dated March 20, 2007

Counsel has provided medical documentation to corroborate the above statements with respect to the applicant's spouse's mother's permanent disability. The applicant's spouse further elaborates on the hardships that he would face were he to relocate to Uganda with the applicant. As he states,

...I am an only child, and my mother and father are 68 and 73 respectively. My mother has a condition called lumbar spinal stenosis, which is a degenerative disease of the spine. I am living together with her at our home...and I am the head of the household. She is retired, and relies on my income to pay for the bills, including her medical expenses, our groceries, and all the expenses related to the household. My father is more independent, however, he has a pacemaker and suffers with arthritis. He has had two hospitalizations in the past 18 months, and although he likes to keep his independence, he is aging, and I am his only relative who can provide him with support and help with decisions at the time of illness....

Honestly I cannot leave my parents here alone without support here in the United States. To leave for Uganda would mean giving up my income. Because I have no cultural or business ties to Uganda, I would be unlikely to have any means of earning an income. Leaving with Patricia [the applicant] would create conditions where we would have to sell our primary residence. I cannot afford to lose our home....

*Statement from* [REDACTED] dated March 21, 2007.

The U.S. Department of State references the following, in pertinent part, regarding Uganda:

U.S. citizens living in or planning to visit Uganda should be aware of threats to their safety from insurgent groups, particularly in the northern region near the border with Sudan, along the western border with the Democratic Republic of the Congo, and in the southwest near the border with Rwanda. Insurgent groups have at times specifically targeted U.S. citizens. They have engaged in murder, armed attacks, kidnapping, and the placement of land mines. Isolated, incidents occur with little or no warning.

American citizens traveling to northern Uganda, especially in those districts bordering southern Sudan and the Democratic Republic of the Congo, are advised to exercise caution due to the Lord's Resistance Army (LRA) insurgency. A 2006 Cessation of Hostilities Agreement signed between the parties remains in place,

and peace negotiations are still ongoing. However, absent a comprehensive peace agreement, the potential for conflict remains. Most LRA insurgents have fled Uganda, but it is believed that isolated elements of the LRA remain within some northern districts and continue to pose a threat to safety and security. LRA road ambushes and other attacks in northern Uganda and southern Sudan killed both foreign nationals and Ugandan citizens in 2005 and early 2006. One attack that killed a foreign national in November 2005 took place within the boundaries of Murchison Falls National Park, a popular tourist destination. Following the 2005 attack within Murchison Falls National Park, the Ugandan Government strengthened its security presence within the park environs. Tourists continue to visit the park, but American citizens are advised to restrict all activity on the northern bank of the Victoria Nile River to the game viewing area west of Paraa Safari Lodge known as the "Buligi Circuit" or the "Delta Circuit Area." In March 2004, two Americans were murdered in northwestern Uganda in Yumbe District. The motives for the attacks remain unclear.

American citizens traveling to northern Uganda are advised to ensure that they have made appropriate travel, lodging, and communication arrangements with their sponsoring organization before visiting the region. Local officials in northern Uganda have expressed concern for the safety and security of foreigners visiting Internally Displaced People (IDP) camps, and have also expressed concern about foreign nationals traveling to the region apparently to assist with relief efforts, but without any specific arrangements with a sponsoring organization. Foreign citizens who travel to the region without a sponsoring organization may not find secure lodging or safe transport, and may become more susceptible to crime. They may also find that local officials are unable to provide assistance in the event of an emergency.

Armed banditry and attacks on vehicles are also very common in the Karamoja region of northeastern Uganda, and the Uganda People's Defense Forces (UPDF) continues to implement a program to disarm Karamojong warriors. Incidents during the past two years have included ambushes of UPDF troops, and attacks on vehicles, residences, and towns that resulted in multiple deaths. Most of the violence occurred in the districts of Kaabong, Kotido, and Abim, although some violent incidents also occurred in Moroto and Nakapiripirit Districts. American citizens are advised to avoid travel to the Karamoja region given the frequent insecurity.

Due to security concerns from potential insurgent activity or armed banditry, U.S. Government employees must have permission from the U.S. Chief of Mission in Uganda to visit the following districts: Abim, Adjumani, Amolatar, Amuria, Apac, Arua, Bundibugyo, Dokolo, Gulu, Kaabong, Kabale, Kaberamaido, Kanungu, Katakwi, Kilak (Kilak District includes the segment of Murchison Falls National

Park that is north of the Victoria Nile River), Kisoro, Kitgum, Koboko, Kotido, Lira, Maracha, Moroto, Moyo, Nakapiripirit, Nebbi, Oyam, Pader, and Yumbe.

Crimes such as pick pocketing, purse snatching, and thefts from hotels and parked vehicles or vehicles stalled in traffic jams are common. The Embassy receives frequent reports of theft of items from locked vehicles, even when the stolen items were secured out of sight and the vehicle was parked in an area patrolled by uniformed security personnel. Pick pocketing and the theft of purses and bags is also common on public transportation. Armed robberies of pedestrians also occur, sometimes during daylight hours and in public places. Although infrequent, the Embassy also receives reports of armed carjackings and highway robbery. In May 2007, two American citizens reported an attempted robbery when they were traveling near the town of Bugiri in eastern Uganda. The Americans reported that a second vehicle with at least one armed assailant tried to stop their vehicle by forcing it off the road. This incident occurred during daylight hours. On June 27, 2007, two American citizens were robbed and held at gunpoint when the vehicle transporting them to Entebbe Airport was stopped by a group of armed men. This incident occurred during the early morning hours on Entebbe Road. Although some of these attacks are violent, victims are generally injured only if they resist. U.S. Embassy employees are advised against using roads at night, especially in areas outside the limits of cities and large towns. Women traveling alone are particularly susceptible to crime. Home burglaries do occur and sometimes turn violent. It is not uncommon for armed groups to invade homes.

American citizens visiting Uganda are advised not to accept food or drink offered from a stranger, even a child, because such food may contain narcotics used to incapacitate a victim and facilitate a robbery. In 2006, there were a number of reports of such incidents in the city of Kampala. Victims included the patrons of bars or entertainment centers. Similar crimes occurred on passenger buses. In 2006, an American citizen traveling by bus from Kenya to Uganda was incapacitated and robbed on the bus when the passenger accepted a sealed beverage from a fellow passenger. Expatriates traveling by bus to the popular tourist destination of Bwindi Impenetrable National Forest in southwest Uganda were also robbed under similar circumstances.

Medical facilities in Uganda, including Kampala, are limited and not equipped to handle most emergencies, especially those requiring surgery. Outside Kampala, hospitals are scarce and offer only basic services. Equipment and medicines are often in short supply or unavailable. Travelers should carry their own supplies of prescription drugs and preventive medicines. A list of medical providers is available at the U.S. Embassy.

Malaria is prevalent in Uganda. Travelers who become ill with a fever or flu-like illness while traveling in a malaria-risk area and up to one year after returning home should seek prompt medical attention and tell the physician their travel history and what antimalarials they have been taking.

*Country Specific Information-Uganda, U.S. Department of State, dated October 25, 2007.*

Based on the career disruption that the applicant's spouse would encounter were he to reside in Uganda for a two-year period with the applicant, the problematic economic and social conditions in Uganda and the applicant's spouse's familial situation, taking into account his mother's permanent disability, her dependence on her son and the applicant's spouse's need to be close to his parents to assist them on a daily and/or emergent basis, it has been established that the applicant's spouse would encounter exceptional hardship were he to relocate to Uganda based on his spouse's two-year home foreign residency requirement.

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 Uganda. As stated by the applicant's spouse,

...The other alternative without a waiver is that [the applicant] would be forced to leave the country on without me. This would create a strain on our marriage life, and would mean that I have no support in caring for my mother, keeping up the household, and caring for my father as his health requires. And the financial support the (sic) ends to keeping up our home would be lost. This would clearly have an effect on our quality of life....

*Supra* at 1-2.

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, and without her support with respect to his parent's care, for two years.

Moreover, no current financial documentation has been provided to establish the applicant's and her spouse's parent's current economic situation, to corroborate that the applicant's spouse will suffer exceptional financial hardship with respect to his and his parent's care, due to the applicant's two-year relocation abroad. The record indicates that the home where the applicant and her spouse currently reside is owned by the applicant's spouse's mother; as such, housing costs are presumably at minimal charge to the applicant's spouse. *See Letter from* dated October 17, 2005.

Nor has it been established that the applicant is unable to obtain gainful employment in Uganda, thereby assisting with the maintenance of the U.S. household. Although the applicant has provided a letter that states that she would not be able to find employment as a Grade III Magistrate, it has not been established that she would be unable to find alternate gainful employment. *See Letter from Gidudu Lawrence, Chief Registrar of the High Court, The Republic of Uganda, dated July 2, 2007.* While the applicant's spouse may need to make adjustments with respect to his financial situation and the care of his parents while the applicant resides abroad

due to her foreign-residence requirement, it has not been shown that such adjustments would cause the applicant's spouse exceptional hardship.

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. Although the applicant has established that her spouse would suffer exceptional hardship if he moved to Uganda with the applicant for the requisite two-year period, the applicant has failed to establish that her spouse would suffer exceptional hardship were she to relocate to Uganda while he remained in the United States. The record demonstrates that the applicant's spouse faces 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.