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

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OCT 20 2008

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

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:

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 "R. 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 appeal will be dismissed.

The applicant is a native and citizen of Guinea. The record establishes that she was admitted to the United States in J-2 nonimmigrant status, presumably as the derivative spouse of [REDACTED] (who she divorced in February 2003), a J-1 visa holder, on October 24, 2000. Based on a notation made by the U.S. Embassy in Conakry, Guinea on the applicant's J-2 Visa, she is apparently 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 her two-year foreign residence requirement, based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to Guinea 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 Guinea.

The director determined that pursuant to a review of CIS records, the applicant was never admitted as a J nonimmigrant, and therefore, she was not eligible for a waiver. *Director's Decision*, dated October 3, 2007. The application was denied accordingly.

The applicant, in her original hardship waiver submission, included a copy of her J-2 Visa, issued to her on September 18, 2000 by the U.S. Embassy in Conakry, Guinea, and a copy of her Form I-94, evidencing her J-2 entry in October 2000. As such, contrary to the director's conclusion referenced above, the applicant was admitted as a J-2 nonimmigrant, and based on the notation on her J-2 Visa, she is subject to the two-year foreign residence requirement under section 212(e) of the Act.

In support of the waiver submission, the applicant references that she "came to the United States of America on October 24, 2000 to join my ex-husband. On my arrival, I went through hell. He put me in the house with two other wives and I was maltreated. I was enslaved for quite some time and I was kicked out of the house in December 2002 and earlier in 2003 I was served a divorce paper from [REDACTED] I went ahead and remarried in October 08, 2003 and since then, I have been living happily with my husband, [REDACTED] who is a U.S. citizen..." *Letter from [REDACTED]*, dated June 25, 2007.

Irrespective of the applicant's stated abuse and subsequent divorce to the J-1 principal, she remains subject to the two-year foreign residence requirement under section 212(e) of the Act. 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, 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, the AAO confirms that irrespective of the fact that the applicant has divorced the J-1 principal, the applicant remains subject to section 212(e) of the Act.

The applicant's options to fulfill the requirements as set forth under section 212(e) of the Act are to: 1) return to her home country for a two-year period, 2) obtain a waiver approval through hardship and/or persecution, or 3) obtain an interested government agency recommendation from an eligible agency, such as the U.S. Department of State.¹ The applicant has failed to establish that she returned to her home country for two years. Nor has she established that the U.S. Department of State or another eligible agency has recommended a waiver on her behalf as an interested government agency. As such, an approval of a Form I-612, Application for Waiver of the Foreign Residence Requirement (Form I-612) based on hardship (as the applicant has made no references to being subject to persecution were she to return to Guinea) is a necessity if the applicant wishes to pursue permanent residency processing based on her marriage to a U.S. citizen.

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

¹ As stated by the U.S. Department of State,

A J-2 cannot independently apply for a waiver. However, in cases of death or divorce from the J-1...the Waiver Review Division [U.S. Department of State] may consider requests for waivers on behalf of the J-2 on a limited case-by-case basis. If the J-2 feels that his/her case merits special consideration by the Waiver Review Division, he/she will need to complete Form 3035 on-line, pay the processing fee, and submit the appropriate statements of reason. The Division will also need the J-1's DS-2019/IAP-66 forms and divorce decree or death certificate, whichever is applicable.

See Waivers of INA Section 212(e)-Frequently Asked Questions, U.S. Department of State.

(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).

The first step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would experience exceptional hardship if he resided in Guinea for two years with the applicant. No documentation has been provided that explains and details what hardships the applicant's spouse would face were he to reside in Guinea with the applicant for a two-year period. Nor has the applicant provided a statement from her spouse, detailing further what hardships he would face were he to reside in Guinea 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)). As such, it has not been established that the applicant's spouse would suffer exceptional hardship were he to reside in Guinea with the applicant for a two-year period.

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 Guinea. Again, no statements and/or documentation have been provided to establish what specific hardships the applicant's spouse would face were his wife to relocate to Guinea for two years while he remained in the United States.

The AAO finds that the applicant has failed to establish that her U.S. citizen spouse would suffer exceptional hardship if he relocated to Guinea 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 Guinea for a two-year period. Thus, the record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen spouse will face exceptional hardship if the applicant's waiver request is denied.

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.