



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

H3

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 18 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:

[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.

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, a native and citizen of Colombia, was admitted to the United States in J-1 nonimmigrant status in April 2002 to participate in a program sponsored by the U.S. Department of State. He 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) based on U.S. government financing. The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen spouse would suffer exceptional hardship if she moved to Colombia temporarily with the applicant and in the alternative, if she remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Colombia.

The director determined that the applicant failed to establish that his U.S. citizen spouse would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Colombia. *Director's Decision*, dated March 26, 2008. The application was denied accordingly.

In support of the appeal, the applicant submits Form I-290B, Notice of Appeal. 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.

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 she resided in Colombia for two years with the applicant. To support this contention, the applicant states the following:

At this time she [the applicant's spouse] is suffering of depression.... In Colombia I will not be able to find a suitable job and she will not be able to have the treatment for her emotional problems and will not be able to work....

Form I-290B, Notice of Appeal, dated April 10, 2008.

No corroborating documentation has been provided that explains and details what exact hardships the applicant's spouse would face were she to reside in Colombia. Nor has the applicant provided a statement from his spouse that details, from her perspective, what hardships she would face were she to reside in Colombia for a two-year term. The AAO notes that the statement provided by the applicant's spouse, dated October 2, 2007, makes no reference to the hardships she would face in Colombia. Moreover, no objective documentation has been provided that establishes that the applicant and/or his spouse would be unable to obtain gainful employment in Colombia. Finally, it has not been established that the applicant's spouse would be unable to obtain appropriate treatment in Colombia to treat her depression. 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 second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would suffer exceptional hardship if she remained in the United States during the two-year period that the applicant resides in Colombia. To support the claim that the applicant's spouse would face exceptional emotional hardship due to the applicant's absence, a letter is provided by [REDACTED] M.D. As stated by Dr. [REDACTED]:

[REDACTED] [the applicant's spouse] is my patient for a long time. She has some emotional problems for along [sic] time. Recently these problems are getting worst due to several odd circumstances. She lost her job for six months. She lost her house in mortgage crunch. On the top of this her husband [the applicant] who is the only support to her is going to be deported soon.... She is going through a lot of depression and anxiety due to this.... If her husband will be deported at present situation, It may cause a significant adverse impact on her health....

Letter from Complete Family Care, P.C., dated April 9, 2008.

Although the input of a professional is respected and valuable, no documentation has been provided from a mental health professional that outlines in detail the applicant's spouse's prognosis, its severity, and its short and long-term treatment plans, to further support the gravity of the situation. In addition, no documentation has been provided that establishes that the applicant's spouse would be unable to travel to Colombia to visit the applicant on a regular basis. Finally, the applicant's spouse states that "...my...children have their

separate lives, they are married and each has their own family....” *Letter from* [REDACTED] dated October 2, 2007. It has not been established that the applicant’s spouse’s adult children would not be able to assist their mother emotionally, should the need arise, during the applicant’s two-year absence from the United States. As such, it has not been established that the applicant’s spouse would suffer exceptional emotional hardship were she to reside in the United States while the applicant returns to Colombia for two years.

As for [REDACTED] concerns regarding the applicant’s spouse’s recent financial difficulties and the financial hardships she would face without the applicant’s physical presence in the United States, no documentation has been provided that details the applicant and his spouse’s financial situation, and what specific financial hardships the applicant’s spouse would face without the applicant’s presence. Moreover, it has not been established that the applicant would be unable to obtain gainful employment in Colombia, thereby assisting his wife in the United States should the need arise. As referenced above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof.

While the applicant’s spouse may need to make adjustments with respect to the maintenance of the household and her emotional care while the applicant resides abroad for two years, it has not been shown that such adjustments would cause the applicant’s spouse exceptional hardship. The applicant’s spouse’s hardships, if she remained in the United States for two years without the applicant, do not go beyond that normally suffered upon the temporary separation of a husband from his wife.

The AAO finds that the applicant has failed to establish that his U.S. citizen spouse would suffer exceptional hardship were he to relocate to Colombia while his spouse remained in the United States and in the alternative, if his spouse moved to Colombia with the applicant for the requisite two-year term. Thus, 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 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 his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.