U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

#3

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 22 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of the Foreign Residence Requirement of 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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of India. She 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), because the Director, United States Information Agency, has designated India as requiring the services of persons with the applicant's specialized knowledge or skill. The applicant was admitted to the United States as a J1 nonimmigrant exchange visitor on April 12, 2001. The applicant seeks a waiver of her two-year residence requirement in India.

The director determined that the applicant was subject to the two-year residence requirement set forth in section 212(e) of the Act. The director determined further that the applicant had failed to provide evidence to establish she was eligible for a waiver under section 212(e) of the Act. The application was denied accordingly.

On appeal, the applicant asserts that she should not be subjected to section 212(e) foreign residence requirements. The applicant asserts further that even if she is subject to section 212(e) foreign residence requirements, the requirements should be waived because the Indian government has provided a written statement that it has no objection to such a waiver.

Section 101(a)(15)(J) of the Act, 8 U.S.C. § 1101(a)(15)(J) states, in pertinent part, that:

> (15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens
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> > (J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j), and the alien spouse and minor children of any such alien if accompanying him or following to join him.

Section 212(e) of the Act states in pertinent part that:

> (e) No person admitted under section 101(a)(15)(J) or acquiring such status after admission
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> > (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.**

(Emphasis added). The record reflects that the applicant was admitted into the United States pursuant to a J1 nonimmigrant visa issued under section 101(a)(15)(J) of the Act, and that at the time of her admission or acquisition of status under section 101(a)(15)(J), she was a national or resident of a country which the Director of the United States Information Agency had designated as requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged. The AAO therefore finds that the applicant is subject to the section 212(e) requirement that she obtain a waiver of her foreign residence.

The AAO finds that the record in the present case is devoid of evidence to establish that the applicant has a U.S. citizen or lawful permanent resident spouse or child who would suffer exceptional hardship upon her departure from the United States. The record also contains no evidence to establish that the applicant would be subjected to persecution in her country if she returned to India.

The record additionally contains no evidence to establish that the Director, Waiver Review Division, U.S. State Department Visa Office has provided a favorable recommendation in the applicant's case. The AAO therefore finds that the applicant also failed to establish that she qualifies for a waiver of the two-year foreign residence requirement based on the written "no objection" letter that she received from the Indian government.

The burden of proving eligibility for relief under section 212(e) of the Act rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant in the present case has not met her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.