U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

#3

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 07 2004

IN RE: Applicant: [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, Director
Administrative Appeals Office

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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 record reflects that the applicant is a native of India. He was admitted into the United States as a J1 nonimmigrant exchange visitor on August 28, 2000, based on his participation in an American Institute for Foreign Study Foundation international, educational and cultural exchange program, and he 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). The applicant's J1 nonimmigrant visa status ended June 30, 2001. The record reflects that the applicant did not depart the United States and that he married a U.S. citizen in July 2002. The applicant presently seeks a waiver of his two-year residence requirement in India, based on the claim that his wife would suffer exceptional hardship if she moved to India with the applicant or if she remained in the United States while the applicant fulfilled his two-year foreign residence requirement.

The director found that the applicant had failed to provide evidence establishing that the applicant's wife would suffer exceptional emotional, racial, social or religious-based hardship if she moved to India with the applicant. The director additionally found that the evidence failed to establish that the applicant's wife would suffer exceptional hardship if she remained in the United States while the applicant fulfilled his temporary two-year foreign residence requirement in India. The application was denied accordingly.

On appeal, counsel asserts that the applicant's wife is presently undergoing medical treatment related to the death of her grandmother and the stress and anxiety of possibly being separated from the applicant for two years. Counsel asserts that the applicant is dependent on the applicant for support, and that as an African-American Muslim, would face societal, cultural, racial, religious, and language hardships if she moved to India with the applicant.

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 . . . shall be eligible to apply for an immigrant visa, or for permanent residence . . . 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 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 . . . 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, "[t]emporary 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)".

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 present record contains the following evidence pertaining to [redacted] exceptional hardship claim:

> A news article discussing a family-honor killing of an Indian Muslim girl and her Hindu boyfriend, by the girl's brothers.
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> An April 13, 2003, letter from the applicant's mother stating that the applicant's wife and their future children are unwelcome in her home and that his marriage to an African girl has caused the family to be stigmatized and degraded by their community. The letter additionally states that the applicant and his wife could be harmed by the father of a girl the applicant was supposed to marry, and the applicant's mother requests that the applicant cease contact with his family.
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> A statement written by the applicant stating that his parents oppose his marriage to Mrs. [redacted] because it goes against the cultural and social norm of arranged marriages and because [redacted] is of a different race. The applicant additionally states that social

> and cultural norms in India would cause his wife hardship and that separation from her family in the U.S., language barriers and the necessity of delaying her college education if she left the United States, would cause the applicant's wife to suffer hardship if she moved to India.

The AAO finds that the evidence in the record fails to establish that the applicant's wife would suffer exceptional hardship if she traveled to India with the applicant. The AAO finds further that the evidence in the record fails to establish that the applicant's wife would suffer hardship beyond the anxiety and loneliness ordinarily anticipated from a two-year separation, if she remained in the United States while the applicant returned temporarily to India.

The AAO notes that the record contains no documentation or evidence to indicate that Mrs. is presently undergoing medical or psychological treatment for stress or anxiety related to her possible separation from the applicant. In addition, the record contains no evidence indicating that Mrs. is financially reliant on the applicant.

The AAO notes further that neither the applicant's statement nor his mother's letter indicates that the applicant's wife is Muslim or that she would have religious-based problems in India. Moreover, the record contains no corroborative evidence or information to establish that would face racial, societal or cultural hardships in India. The record also lacks evidence to establish the applicant's religious background or to establish the nature of her family relationships in the United States. The AAO finds that the applicant's mother's statement that his wife is unwelcome in their house, and that his marriage to has negatively stigmatized their family, does not, in and of itself, establish that would suffer exceptional hardship in India. Furthermore, the applicant's mother's statement that the applicant and his wife might suffer harm from the father of a girl the applicant was supposed to marry, is general and unsupported by any corroborating information or evidence in the record.

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.