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

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**U.S. Citizenship and Immigration Services**

[redacted]

FILE: [redacted] Office: VERMONT 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, Vermont 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 Colombia who 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 he participated in an exchange program financed by the United States (U.S.) government for the purpose of promoting international, educational and cultural exchange. The applicant was admitted to the United States as a J1 nonimmigrant exchange visitor from February 2002 through June 2002. On June 16, 2002, the applicant married a U.S. citizen. He presently seeks a waiver of his two-year foreign residence requirement.

The director determined that the applicant had failed to establish that his wife would suffer exceptional hardship if the applicant fulfilled his two-year foreign residence requirement. The application was denied accordingly.

On appeal, counsel asserts that the applicant's wife (Mrs. suffered a miscarriage due to anguish caused by the thought of a separation from her husband. Counsel asserts further that Mrs. hree-year old daughter (the applicant's step-daughter) has mental problems and that a separation from the applicant would disturb her psychological treatment and her mental state.

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
>
> > (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
> >
> > . . .
> >
> > [s]hall not 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 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 . . . 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 *Huck v. Attorney General of the U.S.,* 676 F. Supp. 10 (D.D.C. 1987) the U.S. District Court, District of Columbia stated that, "[c]ourts have recognized that the "exceptional hardship" standard must be stringently construed lest the waiver exception swallow the salutary two-year residence rule . . . . Forceful application of the standard also guards against attempts by applicants to manufacture hardship in order to come within its terms." (Citations omitted).

The U.S. District Court, District of Columbia stated in, *Keh Tong Chen v. Attorney General of the United States,* 546 F. Supp. 1060, 1064 (D.D.C. 1982), 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 to support the claim that the applicant's wife and stepchild will suffer exceptional hardship if the applicant is required to fulfill his two-year foreign residence requirement:

> A Birth certificate reflecting that [redacted] has a daughter [redacted] Forty), born June 9, 2000. The daughter's father is [redacted]
>
> A March 10, 2003, medical laboratory result indicating that [redacted] tested negative for pregnancy.
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> A hospital discharge letter reflecting that the [redacted] suffered an abortion on May 31, 2003, and that she was additionally diagnosed with morbid obesity.
>
> An August 12, 2003, Psychological Evaluation concluding that [redacted] has no psychological dysfunctions or impairments.
>
> An August 6, 2003 letter from the Archbishop of San Juan, Head Start Program, reflecting that the applicant's stepdaughter attended the program between 2003 and 2004.

A 2002 jointly filed Federal Income Tax form reflecting that and the applicant earned 347.00 during the year 2002.

An apartment lease signed March 10, 2003 reflecting that the applicant and his wife pay rent in the amount of $150.00 a month.

Based on the above evidence, the AAO finds that the applicant has failed to establish that miscarriage was caused by emotional stress related to the applicant's foreign residence requirements. The evidence also fails to establish that the applicant's stepdaughter suffers from a mental impairment or that she is undergoing psychological treatment. The AAO therefore finds that the applicant has failed to establish that his wife or stepdaughter would suffer emotional or financial hardship beyond the anxiety and loneliness ordinarily anticipated from a two-year separation, if the applicant returned temporarily to his country. The appeal will be dismissed accordingly.

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.