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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: APR 29 2005

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director to consider the section 212(e) waiver recommendation from the Director, U.S. Department of State Waiver Review Division.

The record reflects that the applicant is a native of Poland. She was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on November 20, 2000. The applicant 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 record reflects that the applicant married [REDACTED]tt, a United States citizen (USC), on March 30, 2003, and that they have a United States Citizen child who was born on September 17, 2003. The applicant seeks a waiver of her two-year residence requirement in Poland, based on the claim that her husband and child would suffer exceptional hardship if the applicant returns to Poland for two years.

The director found that the circumstances of a two-year separation of the family with accompanying anxiety, loneliness and altered financial circumstances are the hardships to be anticipated by compliance with the two-year residence requirement, not exceptional hardships. The application was denied accordingly. *Decision of the Director*, Nebraska Service Center, Lincoln, Nebraska, August 17, 2004.

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 at 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 the Immigration and Naturalization [now, the Director of 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 United States Department of State received a letter dated January 26, 2005 from the Polish Embassy in Washington D.C. stating that the Polish government had no objection to the United States Government waiving the two-year foreign residence requirement for the applicant. The United States Department of State, Waiver Review Division, sent a letter dated February 9, 2005 to the Director, Nebraska Service Center, recommending that the waiver be granted.

Based on the above, the AAO will remand the matter to the director to consider the waiver recommendation from the United States Department of State Waiver Review Division.

ORDER: The record of proceeding is remanded to the director for further action consistent with this decision.