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

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 22 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:

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

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 record reflects that the applicant is a native of Croatia. He was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on May 30, 2003. 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) because the field of specialization is included on the Exchange Visitor Skills List for Croatia. The applicant's J1 nonimmigrant visa status expired October 25, 2003. The record reflects that the applicant married [redacted] (hereinafter, [redacted], a United States citizen (USC), on July 5, 2003. [redacted] has a daughter from a previous marriage. The applicant seeks a waiver of his two-year residence requirement in Croatia, based on the claim that his wife would suffer exceptional hardship if she remains in the United States while the applicant fulfills his two-year residency in Croatia.

The Director found that the applicant failed to establish that his compliance with the two-year foreign residence requirement would impose an exceptional hardship on [redacted] The application was denied accordingly. *Decision of the Director*, Nebraska Service Center, dated March 30, 2004.

On appeal, the applicant maintains that the Director's decision is wrong, both factually and legally. In support of the appeal, the applicant submitted a statement from himself, a statement from [redacted] and a copy of the Certificate of Eligibility for Exchange Visitor (J-1) Status. The entire record was 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
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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,
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> (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
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> (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.

In *Matter of Mansour,* 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals stated that, "[E]ven 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)."

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 applicant contends that [redacted] will experience exceptional financial hardship if he moves to Croatia for two years. He asserts that Ms. [redacted] income is not sufficient to cover expenses. The record indicates that Ms. [redacted] earns $2,000 per month and the applicant earns approximately $1,600 per month. Aside from the monthly rent payment of $1,250, the applicant provided no other documentation of family expenses. In the applicant's personal statement dated December 29, 2003 that accompanied the waiver application, he stated that [redacted] has a good job in Minnesota and this has been her home for over 10 years." It appears that Ms. [redacted] survived financially without the applicant's income prior to their marriage. Ms. [redacted] stated that if the applicant moves to Croatia, she and her daughter will have to move from her home, however, she does not

state that she would be unable to survive financially without the applicant's income. The applicant has not established that Ms. [redacted] will experience exceptional financial hardship if he moved to Croatia.

The applicant asserts that his move to Croatia will cause exceptional emotional hardship to Ms. [redacted] The applicant did not explain the possible effects of such a separation, nor did he provide any documentation.

Ms. [redacted] maintains that the applicant's move to Croatia would cause hardship to her daughter, because Ms. [redacted] and her daughter would have to move from their current home. In her April 21, 2004 affidavit, Ms. [redacted] stated "[T]his has been my daughter's home for some time now, she has made friends and other great adjustments, and I am afraid that uprooting her from this stable environment would seriously affect her emotional health." Ms. [redacted] does not explain the potential emotional effect on her daughter, nor does she provide any documentation. Additionally, the emotional effects of moving to another home are a normal part of separation and do not constitute exceptional hardship.

The AAO finds that the evidence in the record fails to establish that Ms. [redacted] will experience exceptional hardship if she remains in the United States while the applicant returns temporarily to Croatia. The AAO also finds that the applicant provided no evidence to establish that Ms. [redacted] or her daughter would experience exceptional hardship if they went to Croatia.

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.