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

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 24 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, 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 Argentina. She was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on August 12, 1996 to attend graduate school at The University of California, Berkeley. 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] (hereinafter, [redacted] a United States citizen (USC), on November 30, 2001. The applicant seeks a waiver of her two-year residence requirement in Argentina, based on the claim that her husband would suffer extreme hardship if he moved to Argentina with the applicant for the two years she is required to live there.

The Director found that the applicant's husband would experience exceptional hardship if he accompanied the applicant to Argentina. The Director also found that the applicant's husband would not experience exceptional hardship if he remained in the United States while the applicant lived in Argentina for two years. The application was denied accordingly. *Decision of the Director*, California Service Center, Laguna Niguel, California, dated March 18, 2004.

On appeal, the applicant contends that [redacted] would experience extreme personal, professional, and financial hardship if the applicant's waiver is denied and [redacted] moves to Argentina. The applicant asserts that if the waiver is denied, [redacted] will have to move to Argentina because he and the applicant want to have children as soon as possible. The applicant does not address any potential hardship that [redacted] would experience if he remains in the United States. In support of the appeal, the applicant submitted a brief. 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
>
> (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.

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.)

I. Potential Hardship if [redacted] Accompanies the Applicant to Argentina

First analyzed is the potential hardship [redacted] will experience if he relocates to Argentina with the applicant for the two years she is required to live there. [redacted] is an Associate Professor at The University of California, Berkeley (hereinafter, Berkeley). He earns a yearly salary of approximately

$122,000 [redacted] also earned approximately $52,000 in 2002 as a consultant to Citigroup. The applicant asserts tha[redacted] would be unable to find a full-time academic position at a research university in Argentina, that he would lose his position at Berkeley, and that it would be difficult for him to obtain a job at a top-ranked research university when he returned to the United States. The applicant provided no evidence to support these claims, nor did she discuss more general employment possibilities.

[redacted] graduated summa cum laude from Harvard University and earned two M.A. degrees and a Ph.D. from Stanford University. He received several job offers from top American universities. In 2003, he was awarded a tenured position at Berkeley, where he is a member of the Political Science Department and the Business School. Given [redacted] istinguished background, it appears that his professional opportunities are not as limited as the applicant maintains.

The applicant stated tha[redacted] received a one-year leave of absence from Berkeley and lived with the applicant in Argentina during the 2003-2004 academic year. This fact undermines the applicant's claim that her husband would experience extreme hardship if he accompanied her to Argentina. Also, the applicant asserted that[redacted] could not be granted more than a one-year leave of absence from Berkeley, but she provided no proof. The University of California Policy APM-740 that the applicant quoted relates to employee requirements upon returning from a leave of absence, not whether the applicant can be absent from Berkeley for more than one year.

II. Potential Hardship if[redacted] Remains in the United States

Next examined is the potential hardship to [redacted] if he stays in the United States during the two years the applicant is required to live there. The applicant maintains that if the waiver is denied[redacted] must move to Argentina because he and the applicant want to begin trying to have a family as soon as possible. The desire of the applicant and [redacted] to start a family is a personal choice. The applicant must establish that her husband would experience exceptional hardship if he moves to Argentina with her, or if he stays in the United States. The applicant has provided no evidence addressing whether Dr. [redacted] would experience hardship if he remains in the United States while the applicant fulfills her two-year residency requirement in Argentina.

III. Conclusion

The AAO finds that the evidence in the record fails to establish that the applicant's husband would experience exceptional hardship if he traveled to Argentina with the applicant. The AAO also finds that the evidence in the record fails to establish that the applicant's husband would experience exceptional hardship if he remained in the United States while the applicant returned temporarily to Argentina.

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 her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.