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U.S. Citizenship  
and Immigration  
Services

PHOTOCOPY



HB  
Date:

JUN 17 2005

FILE: [Redacted] Office: VERMONT SERVICE CENTER (LATHAM, NY)

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of the Foreign Residence Requirement of 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 application was denied by the Director, Vermont Service Center (Latham, New York). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant is a native of China 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). The applicant was admitted to the United States with a J1 nonimmigrant visa on January 12, 2000. He presently seeks a waiver of his two-year residence requirement in China.

The director determined the applicant had failed to establish that his one-year old U.S. citizen child would suffer exceptional hardship if the applicant were required to fulfill his two-year foreign residence requirement. The application was denied accordingly.

In a letter addressed to the U.S. Citizenship and Immigration Services (CIS) office in Latham, New York, and received by CIS on April 19, 2004, the applicant asserted that his daughter would suffer exceptional hardship in China because she is a U.S. citizen, and would thus not be entitled to anything afforded to a Chinese citizen. The applicant asserted further that he no longer has an obligation to return to China because he was issued a "Notice of Dissolution of Agreement" by the China Scholarship Council.

The applicant's letter was rejected by CIS because the applicant had failed to use the proper form to file his appeal, and because the letter was not timely. The applicant subsequently filed the proper Form I-290, Notice of Appeal to the Administrative Appeals Unit (AAU) on June 8, 2004.

8 C.F.R. § 103.3(a)(2) states in pertinent part:

(i) Filing appeal. The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by § 103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 [33] days after service of the decision.

8 C.F.R. § 103.3(a)(2)(v)(B)(2) states in pertinent part, "[a]n appeal which is not filed within the time allowed must be rejected as improperly filed."

The AAO finds that the letter written by the applicant was properly rejected by CIS because it failed to satisfy the requirement that the applicant file his appeal on Form I-290B. The AAO finds further that the applicant's subsequent filing of a Form I-290B on June 8, 2004, does not remedy the fact that the applicant failed to meet the requirements set forth in 8 C.F.R. § 103.3(a)(2), and that the I-290B was filed in an untimely manner as set forth in 8 C.F.R. § 103.3(a)(2)(v)(B)(2). The appeal will therefore be rejected.

**ORDER:** The appeal is rejected.