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U.S. Citizenship
and Immigration
Services

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HB
MAR 15 2005

FILE:

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

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 Belize. She was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on August 17, 1993 to attend Saint Louis University in Saint Louis, Missouri. 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, Mr. [REDACTED], a United States citizen (USC), on October 26, 2002, and that they have two USC children; [REDACTED] was born on June 28, 2000, and [REDACTED] was born on April 14, 2003. The applicant seeks a waiver of her two-year residence requirement in Belize, based on the claim that her husband and children would experience exceptional hardship if they moved to Belize with the applicant for the two years she is required to live there, or if they remained in the United States.

The Director concluded that the applicant failed to establish that her compliance with the two-year foreign residence requirement would impose an exceptional hardship to her USC spouse and children. The application was denied accordingly. *Decision of the Director*, Nebraska Service Center, Lincoln, Nebraska, dated August 11, 2004.

On appeal, the applicant contends that her husband and children will suffer exceptional hardship if they accompany her to Belize, or if they remain in the United States. In support of the appeal, the applicant submitted a brief; a letter from the her employer; a letter from the her physician; résumés for the applicant and Mr. [REDACTED] letters written by the applicant and Mr. [REDACTED] seeking employment in Belize; letters from employers in Belize informing the applicant and Mr. [REDACTED] that they would not be hired; a chart indicating the number of days the applicant has spent in Belize since 1994; photocopied pages from the applicant's passport; and country conditions information on Belize. 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.)

At the outset, the AAO notes that the applicant's brief addressed three issues that are not directly related to her claim of exceptional hardship to her spouse and children. First, the applicant stated:

As I understood, the purpose of the USAID scholarship program that sponsored the first two years of my study here in the US was to train professionals that would return home to share their expertise. To require me to return home for two years, without an available professional job, to under-use or not all use my skills and training, and higher education seems contrary to the purposes of my program.

The purpose of the program that sponsored the applicant as a J-1 Nonimmigrant Exchange Visitor is not relevant to the analysis of whether her husband and children will experience exceptional hardship if she temporarily returns to Belize. Also, as discussed below, the applicant has not established that she will be unable to find suitable employment in Belize.

Second, the applicant stated that since the expiration of her J-1 status, she has made trips to Belize totaling 323 days and other trips outside the United States totaling 292 days. The 323 days that the applicant spent in Belize count toward the fulfillment of the two-year residency requirement. The applicant is required to return to Belize for 407 days, or approximately 15 months. Accordingly, this decision will address the potential hardship to Mr. [REDACTED] and the children if the applicant returns to Belize for 15 months.

Third, the applicant stated "I also ask that you consider the fact that I have never been in this country illegally and that my husband and I have a track record as productive, career-oriented people who through their professional investment are committed to working in developing nations in the Latin American/Caribbean region, including my country, Belize." The applicant's past immigration status, and the fact that she and her husband are productive people, are not relevant to the analysis of whether her husband or children will experience exceptional hardship if she lives in Belize for 58 weeks.

I. Potential Hardship if Mr. [REDACTED] and the Children Accompany the Applicant to Belize

First analyzed is the potential hardship Mr. [REDACTED] and the children will experience if they relocate to Belize with the applicant for the 15 months she is required to live there. The applicant asserts that if the family moves to Belize, she and Mr. [REDACTED] will not have jobs and will have to sell their assets and home in the United States.

The applicant stated that few opportunities exist in Belize for highly trained professionals like herself and Mr. [REDACTED]. The applicant has a Ph.D. in Biology. Mr. [REDACTED] has a Master of Science Degree in Engineering and Public Policy, and he was scheduled to complete a Master of Arts in International Affairs at the end of 2004. The applicant submitted letters that she and Mr. [REDACTED] wrote seeking employment in Belize, as well as letters from employers in Belize informing the applicant and Mr. [REDACTED] that they were not hired. These letters show that the applicant and Mr. [REDACTED] have applied for highly specialized positions in Belize, but they do not establish that the applicant and Mr. [REDACTED] would be unable to secure appropriate employment in Belize. The applicant and Mr. [REDACTED] have advanced degrees and extensive work experience. Mr. [REDACTED] indicated that he is fluent in English, Spanish, and Portuguese, and that he has traveled to the entire Central American Region and has interacted professionally in all countries. The education and

experience of the applicant and Mr. [REDACTED] should assist them in finding suitable employment in Belize.

The applicant submitted information concerning economic and social indicators in Belize, but she did not explain how these general conditions would cause Mr. [REDACTED] or the children to experience exceptional hardship if they live in Belize for 15 months.

II. Potential Hardship if Mr. [REDACTED] and the Children Remain in the United States

Next examined is the potential hardship to Mr. [REDACTED] and the children if they stay in the United States during the 15 months that the applicant is required to live in Belize. The applicant contends that Mr. [REDACTED] will suffer emotional hardship, and that the children will suffer emotional hardship and developmental hardship, if they are separated from her. The applicant does not explain what these effects would be or why they would constitute exceptional hardship. The applicant submitted an August 27, 2004 letter from her physician, Dr. [REDACTED]. Dr. [REDACTED] stated:

My professional opinion is that families should stay together. Whenever families have difficulties, we can help to keep them united for the stability and developmental growth. Gabriel is now five [sic]. His brother Ivan turned one this year. They each have a few medical problems that can be easily treated in this country. I believe that their growth is at a vulnerable age and that the presence of their mother is quite essential. I believe the stress of maternal separation and the added responsibility to the father, is quite undue and unnecessary for this family, who have been working and contributing members of society.

The general effects described by Dr. [REDACTED] are normal for such a separation; therefore, this letter does not establish that Mr. [REDACTED] or the children will experience exceptional hardship if they stay in the United States while the applicant lives in Belize for 15 months. Also, the AAO notes that as United States Citizens, Mr. Martinez and the children have liberal travel rights and can visit the applicant in Belize.

III. Conclusion

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

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.