U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 23 2006

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.

Ellen C. Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the waiver application and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of the Ukraine. She 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 she participated in an exchange program financed by the United States (U.S.) government for the purpose of promoting international, educational and cultural exchange.

The record reflects that the applicant was admitted into the United States as a J1 nonimmigrant exchange visitor on April 14, 2001. The record reflects that the applicant remained unlawfully in the United States after her J1 program ended on July 15, 2002. The applicant presently seeks a waiver of her two-year residence requirement in the Ukraine, based on the claim that she and her family would suffer exceptional emotional and financial hardship if they were separated for two years.

The director found that the applicant failed to establish that a qualifying family member would suffer exceptional hardship if the applicant were required to reside in the Ukraine for a period of two years. The application was denied accordingly. *See Director's Decision,* dated July 27, 2004.

On appeal, the applicant indicates that she will suffer exceptional emotional and financial hardship if she is required to temporarily depart the country, due to the fact that there are no family members remaining in the Ukraine. The applicant indicates further that her family would suffer exceptional emotional and financial hardship if the applicant were required to temporarily depart the country.

Section 212(e) of the Act states in pertinent part that:

> (e) 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,
> >
> > (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 . . . shall be eligible to apply for an immigrant visa, or for permanent residence . . . 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 a 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 of the Commissioner of Immigration and Naturalization [now, 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 . . . 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.

Hardship to the alien herself is not a permissible consideration under the statute and will not be considered in this decision. A section 212(e) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or child of the applicant.

The record in the instant case reflects that the applicant was born in the Ukraine and that she is unmarried and has no children. The record reflects further that the applicant's mother and brother are not lawful permanent residents or citizens of the United States.

The applicant contends that her family members will suffer exceptional hardship if she is required to return to the Ukraine for a period of two years. However, even if the applicant's mother and brother were lawful permanent residents or citizens of the United States, hardship to them is not a permissible consideration under the statute. The record does not contain evidence that the applicant is married to, or has a child that is, a lawful permanent resident or citizen of the Untied States. The AAO finds that the applicant has no qualifying family members that could suffer exceptional hardship.

The applicant does not assert that she would be subject to persecution if she returned to the Ukraine. The AAO is, therefore, unable to find that the applicant would be subject to persecution if she returned to the Ukraine.

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.