

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

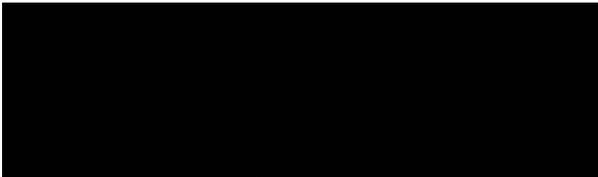
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

H3

**PUBLIC COPY**

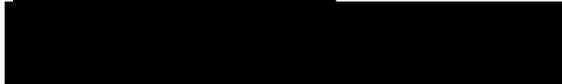


FILE:

Office: CALIFORNIA SERVICE CENTER

Date: OCT 03 2006

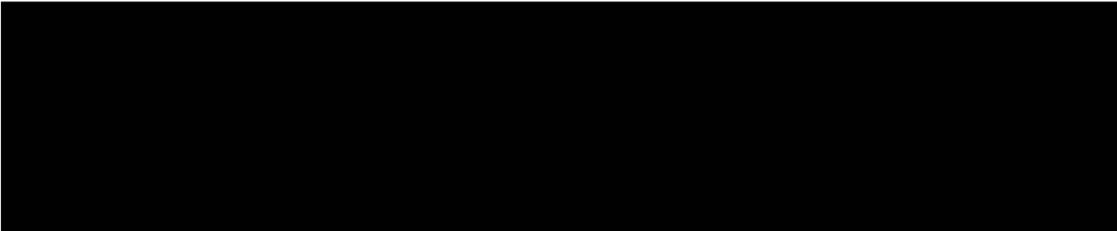
IN RE:



APPLICATION:

Application for Waiver 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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 sustained and the matter will be remanded to the director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State, Waiver Review Division (WRD).

The record reflects that the applicant is a native and citizen of Moldova 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 as a J1 nonimmigrant exchange visitor on August 4, 2000. The applicant is married to a U.S. citizen and she presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to her spouse.

The director determined that the applicant failed to establish exceptional hardship to her spouse if she fulfilled the two-year foreign residence requirement in Moldova. *Decision of the Director*, dated September 28, 2005. The application was denied accordingly.

On appeal, counsel asserts that the applicant presented testimony and credible evidence of exceptional hardship to her spouse. *Form I-290B*, dated October 26, 2005.

The record contains, but is not limited to, counsel's brief, numerous articles and studies on conditions in Moldova, financial documents for the applicant's spouse, the applicant's statement, the applicant's spouse's statement, a doctor's letter for the applicant's spouse and a psychological evaluation of the applicant's spouse. The entire record was considered in rendering this decision.

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

(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 [now the Director, U.S. Department of State, Waiver Review Division (WRD), "Director"] 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 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, 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 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 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, "Therefore, it must first be determined whether or not such hardship would occur as the consequence of her accompanying him abroad, which would be the normal course of action to avoid separation. The mere election by the spouse to remain in the United States, absent such determination, is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed. Further, even 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), supra."

*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 first step required to obtain a waiver is to demonstrate that the applicant's spouse would suffer exceptional hardship upon relocation to Moldova for two years. The record includes a doctor's letter which

states that the applicant's spouse has coronary heart disease, diabetes mellitus, hypertension, gout and severe depression and he is taking medication for these conditions. *Letter from [REDACTED]* dated April 25, 2005. Counsel states that the medical facilities and health care system in Moldova are far below the United States in terms of technology, facilities, services and prescription medication. *Brief in Support of Appeal*, at 5, undated. The record indicates that medical care in Moldova is limited, there are often severe shortages of basic medical supplies and those with existing health problems may be at risk due to inadequate medical facilities. *Department of State, Consular Information Sheet for Moldova*, at 3, dated April 18, 2005. Counsel states that the applicant's spouse would suffer hardship due to a lack of access to doctor prescribed treatment, testing and medication and he would suffer psychological complications under the stressful conditions in Moldova. *Brief in Support of Appeal*, at 3.

The applicant's spouse states that he is responsible for providing child support to his two children from a prior marriage. *Applicant's Spouse's Statement*, at 5, undated. Counsel states that the economic conditions in Moldova are at poverty levels and employment opportunities do not exist. *Id.* The record includes articles detailing the poor economic status of Moldova.

Counsel states that that the applicant's spouse was born in Moldova, when it was part of the Soviet Union, and he was persecuted based on his Jewish faith. *Counsel's Form I-612 Cover Letter*, at 1, dated June 29, 2005. The applicant's spouse states that it took seven years to be able to emigrate to Israel and he was stripped of his citizenship. *Applicant's Spouse's Statement*, at 1. The applicant's spouse details the financial problems, psychological problems and persecution he faced as a refusenik, one who wished to leave the country but was not allowed to. *Id.* The applicant's spouse states that he suffered from anxiety and panic attacks when he went to visit the applicant's family in Moldova. *Id.* at 2. In light of the applicant's spouse's medical problems and the limited care available in Moldova, the foreseeable economic hardship and the unique issues related to the applicant's spouse's prior history in Moldova, the AAO finds that he would suffer exceptional hardship upon relocation to Moldova for two years.

The second step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship upon residing in the United States during the two-year period. Counsel asserts that the applicant's spouse requires constant medical monitoring, a regimented diet and prescription medications. *Brief in Support of Appeal*, at 2-3. The applicant's spouse states that the applicant monitors his health and his health has been under control with her help. *Applicant's Spouse's Statement*, at 6. The applicant's spouse states that the applicant has been invaluable in helping him with his depression and alcohol abuse. *Id.* Counsel states that testimony has been presented to show that the applicant's spouse suffers from emotional disorders which require that he maintain a stable and structured environment. *Brief in Support of Appeal*, at 3. The applicant's spouse's psychologist states that he is taking the antidepressant Lexapro, he is at risk for relapse into alcohol abuse upon separation and his level of dependence on his wife is extremely unusual. *Psychological Evaluation*, at 3-5, undated. The applicant's spouse details the various forms of emotional and physical support that the applicant provides in light of his medical problems. *Applicant's Spouse's Statement*, at 6. In addition, counsel contends that the applicant's spouse would suffer mental anguish worrying about the applicant, whose family received asylum in Germany from Moldova, and he would lose the emotional support of the applicant. *Counsel's Form I-612 Cover Letter*, at 2. Lastly, the applicant's spouse states that the applicant has no family in Moldova and he would have to support two households due to the unlikelihood of her obtaining employment. *Applicant's Spouse's Statement*, at 6.

Based on the aforementioned factors, in particular the nexus between the applicant's spouse's emotional and physical well-being and the presence of the applicant, the AAO finds that the applicant's spouse would suffer exceptional hardship upon remaining in the United States without the applicant during the two-year period.

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 met her burden. The appeal will therefore be sustained. The AAO notes, however, that a waiver under section 212(e) of the Act may not be approved without the favorable recommendation of the WRD. Accordingly, this matter will be remanded to the director so that he may request a WRD recommendation under 22 C.F.R. § 514. If the WRD recommends that the application be approved, the secretary may waive the two-year foreign residence requirement if admission of the applicant to the United States is found to be in the public interest. However, if the WRD recommends that the application not be approved, the application will be re-denied with no appeal.

**ORDER:** The appeal is sustained and the record of proceeding is remanded to the director for further action consistent with this decision.