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U.S. Citizenship and Immigration Services

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FEB 02 2007

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:

IN RE: [redacted]

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting 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 citizen of Israel 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 in J1 nonimmigrant exchange status on July 4, 2004. The applicant states that she departed the United States on July 31, 2004 and returned in K-1 fiancée status on July 20, 2005. *Applicant's Second Statement*, at 1, undated. If any of this time was spent in Israel, it would be deducted from the required two-year period provided there is substantiating evidence of time spent in Israel. The applicant has a U.S. citizen spouse and child. She presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to her spouse and child.

The acting director determined that the applicant failed to establish that a qualifying relative would experience exceptional hardship if she fulfilled her two-year foreign residence requirement in Israel and the application was denied accordingly. *Acting Director's Decision*, dated October 2, 2006.

On appeal, the applicant asserts that her child has health issues. *Form I-290B*, dated October 30, 2006.

The record includes, but is not limited to, statements from the applicant and the applicant's spouse, a doctor's note for the applicant's child, financial documents for the applicant and her spouse, and the applicant's adjustment of status application with supporting documents. 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 or son would experience exceptional hardship upon relocation to Israel for the relevant period of time. The record includes

a doctor's note which indicates that the applicant's son has gastroesophageal reflux disease and formula allergies. *Note from Dr.* [redacted] dated October 10, 2006. The note does not mention the severity of the problems. In addition, there is no evidence that the applicant's son cannot receive appropriate medical treatment on his condition in Israel. The applicant states that it is dangerous in Israel and she does not want to jeopardize her son's safety. *Applicant's Third Statement*, at 4, undated. Although the record indicates that the applicant previously resided in Jerusalem, she does not state where she would live upon return to Israel or provide evidence that this location would place her son at risk from the turmoil she fears. Neither does she offer proof that her son would be in danger regardless of where they lived. The applicant has submitted no evidence that her spouse would suffer exceptional hardship upon relocation to Israel. Based on the evidence contained in the record, the AAO finds that the applicant has failed to establish that her spouse or son would suffer exceptional hardship upon relocation to Israel.

The second step required to obtain a waiver is to demonstrate that the applicant's spouse or son would suffer exceptional hardship upon remaining in the United States during the relevant period of time. The applicant states that she takes care of her son while her spouse works, she has been next to him since birth, and she feeds, bathes, changes and gives medication to him. *Id.* at 2. The applicant states that she does not want her son to be raised in a daycare center, and her spouse would have to be the mother and father to the child, while working to support them. *Id.* The applicant states that her spouse's insurance covers her visits to the doctor, therefore, he will face financial hardship in covering her medical expenses and her other expenses. *Applicant's First Statement*, at 2. However, there is no evidence that the applicant cannot work in Israel to support herself, as she previously was employed in Israel as a teacher. *Applicant's Form G-325A*, dated August 9, 2005. The AAO notes that separation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. Based on the record, the applicant has failed to establish that her spouse would suffer exceptional hardship upon remaining in the United States. However, due to the close, dependent relationship between an infant and his or her parent, the applicant's five-month old child would suffer exceptional hardship if he remained in the United States without the applicant.

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.