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U.S. Citizenship
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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:

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 the application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Morocco 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 in J2 nonimmigrant exchange status on November 8, 2001. The applicant presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to his U.S. citizen spouse and based on a no objection letter from the government of Morocco. After entering the United States in J2 status, the applicant traveled outside of the United States for an unspecified period of time, returning on an advance parole document. Any time that was spent in Morocco during his travel would be deducted from the two-year requirement.

The acting director determined that the applicant had failed to establish his spouse would experience exceptional hardship if he fulfilled the two-year foreign residence requirement in Morocco and the application was denied accordingly. *Acting Director's Decision*, dated July 18, 2006.

On appeal, the applicant states that he is not subject to the two-year requirement and that he has a no objection letter. *Brief in Support of Appeal*, dated September 14, 2006.

The record includes, but is not limited to, the applicant's brief, a psychological evaluation of the applicant's spouse and a no objection letter. 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, Department of State Waiver Review Division] 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.

The applicant states that he should not be required to satisfy the two-year requirement as he entered in J2 status, he did not receive any financial assistance from the U.S. or Moroccan governments and he divorced his original J1 spouse. *See Brief in Support of Appeal*, at 1. There is no legal basis to exempt the applicant from the two-year requirement based on the aforementioned facts.

The applicant states that his spouse managed to overcome the two-year requirement. *See id.* at 2. However, there is no evidence that the former J1 spouse obtained a waiver of the two-year requirement and specifically included the applicant in the waiver application.

The applicant states that he managed to obtain a no objection letter from the Moroccan embassy. *Id.* A no objection letter can be the sole basis for a waiver of the two-year requirement, however, this requires a favorable recommendation from the director of the U.S. Department of State Waiver Review Division.

22 C.F.R. § 41.63(d) states in pertinent part that:

Applications for waiver of the two-year home-country physical presence requirement may be supported by a statement of no objection by the exchange visitor's country of nationality or last legal permanent residence. The statement of no objection shall be directed to the Director through diplomatic channels; i.e., from the country's Foreign Office to the Agency through the U.S. Mission in the foreign country concerned, or through the foreign country's head of mission or duly appointed designee in the United States to the Director in the form of a diplomatic note. This note shall include applicant's full name, date and place of birth, and present address. Upon receipt of the no objection statement, the Waiver Review Branch shall instruct the applicant to complete a data sheet and to provide all Forms IAP-66 and the data sheet to the Waiver Review Branch. If deemed appropriate, the Agency may request the views of each of the exchange visitor's sponsors concerning the waiver application.

The record does not include a favorable recommendation from the director, therefore, the two-year requirement cannot be waived based on the no objection letter.

Next, the AAO will evaluate the applicant's exceptional hardship claim.

The first step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship upon relocation to Morocco for the two-year period. The record reflects that applicant's spouse is close to her daughter and three grandchildren, she feels that she would be unable to find adequate employment in Morocco, she does not know the language and she is concerned that she would not receive adequate treatment for her hypertension and chronic bronchitis. *Psychological Evaluation*, at 3, dated June 7, 2006. There is no substantiating evidence of the claimed medical problems and the lack of adequate treatment in Morocco. In addition, adapting to a new culture is a normal result of joining a spouse abroad, as is adapting to a new financial situation. The record does not reflect hardship beyond that which would normally be expected. Based on the limited evidence in the record, the AAO finds that the applicant has failed to establish that his spouse would suffer exceptional hardship upon relocation to Morocco for the two-year period.

The second step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship upon remaining in the United States during the two-year period. The psychologist states that the applicant's spouse has a long history of abuse and trauma from prior marriages. *Id.*, at 2. The psychological evaluation details the emotional attachment of the applicant to his spouse and lists several medical problems for the applicant's spouse. *Id.* at 4. However, there is no substantiating evidence of these problems. The AAO acknowledges the important role of a clinical psychologist, however, the submitted report is based on two interviews with the applicant's spouse and there is no mention of a follow-up appointment, proposed therapy or treatment for the applicant's spouse. The applicant has not established exceptional hardship to his spouse should she remain in the United States during the two-year period.

The burden of proving eligibility for section 212(e) relief rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.