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

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 20 2008

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.

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 dismissed.

The applicant is a native and citizen of China. The record establishes that he obtained J-1 nonimmigrant exchange status on March 1, 2006 and 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), based on the Exchange Visitor Skills List. The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his lawful permanent resident spouse, and his U.S. citizen child born December 29, 2006, would suffer exceptional hardship if they moved to China temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled his two-year foreign residence requirement in China.

The director determined that the applicant failed to establish that his spouse and child would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in China. *Director's Decision*, dated July 24, 2007. The application was denied accordingly.

In support of the appeal, the applicant provides a letter on his own behalf, dated August 16, 2007, and a letter from his spouse, dated August 15, 2007. The entire record was reviewed and 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
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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, 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 establish that the applicant's spouse and/or child would experience exceptional hardship if they resided in China for two years with the applicant. To support this contention, the applicant states the following:

> ...My wife, [redacted] is a permanent resident of the United States.... She entered the United States on November 11, 2000. Due to political reasons, she is unable to return to China. Her father, [redacted] was persecuted on account of political opinion by Chinese government. She and her father got the green card through political asylum....

Letter from [redacted] dated March 30, 2007.

With respect to the applicant's spouse, no documentation has been provided that details the specific hardships the applicant's spouse would encounter were she to return to China. Although the applicant states that his father-in-law was persecuted, no evidence has been provided to indicate that his spouse would suffer hardship in China. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, with respect to the applicant's child, the applicant has not asserted any reasons why his child would not be able to reside in China with the applicant for a two-year period. As such, despite the director's conclusions to the contrary, the AAO concludes that the applicant has not demonstrated that his family would experience exceptional hardship were they to accompany the applicant to China for two years.

The second step required to obtain a waiver is to establish that the applicant's spouse and/or child would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in China. The applicant asserts that the applicant's family would suffer financial, emotional and psychological hardship due to the applicant's two-year absence. As stated by the applicant,

> ...My wife and I have a child...born on December 29, 2006. Now, my wife is pregnant and we are expecting another baby on April 30, 2008. Taking care of two little babies in the family requires a lot of work. It is absolutely impossible for one person to do all the work.... There is no doubt that, without my help in the family, the babies will not have the proper care. You may think that she can send the babies to day care. But who would pay for the high cost.... In addition, how could my wife handle two kids at night. What if my wife is sick? Without my help in the family, it is inevitably that we have to give away the babies to foster families.
>
> Second, my family need my support financially. My wife and I have over $600,0000 mortgage to pay every month. We also need to pay medical care and day care.... Plus we also have tons of utility bills and credit card bills to pay. Without me working in the United States, my wife have to go bankruptcy....

> Third, my wife's father...was persecuted by Chinese government due to his political opinions. Because of my connection to him, my wife and I are afraid that I will be persecuted by Chinese government as well if I return to China.... This will cause extreme hardship to me, and also my wife. We will live in constant fear and terror if I go back to China....

Letter from [redacted], dated August 16, 2007.

The applicant's spouse further states,

> ...How could I handle all the hard work: feeding them, playing with them, changing diapers, bathing them, rocking them to sleep, caring them whey they cry etc. For two babies it is impossible. Besides, I need eat, work, and sleep myself. I cannot handle them all without my husband's help! Period....
>
> In addition, I need my husband for financial support.... We have a $600,000 mortgage to be paid. Besides, we need pay medical care and day care for the kids, not even to mention all other bills constantly arriving in my mailbox. If my husband returns China, he may not be able to find a job. Or even he can find a job; the salary in China is so low that it is not enough even for a month's electricity bill....

Letter from [redacted] dated August 15, 2006.

To begin, any statements made by the applicant and his spouse regarding hardships that their unborn child would face were the applicant to comply with his two-year home residency requirement are speculative and can not be considered by the AAO at this time. Moreover, the record indicates that the applicant's spouse is gainfully employed full-time, earning $150,000 per year. *Supra* at 1. No financial documentation has been provided to corroborate the statements made by the applicant and his spouse that the applicant's spouse and/or child would experience exceptional financial hardship were the applicant to reside abroad for two years. While the applicant's spouse may need to make adjustments with respect to the maintenance of the household and the care of her child while the applicant resides abroad for two years, it has not been shown that such adjustments would cause the applicant's spouse and/or child exceptional hardship.

Finally, it has not been documented that the applicant would be unable to obtain gainful employment in China, thereby allowing him to assist his spouse with the household expenses. As referenced above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof. The applicant's spouse's and child's hardship, if they remained in the United States for two years without the applicant, does not go beyond that normally suffered upon the temporary separation of a father/spouse from his wife and child.

The AAO finds that the applicant has failed to establish that his spouse and/or child would suffer exceptional hardship were he to relocate to China while they remained in the United States and in the alternative, if his

spouse and/or child moved to China with the applicant for the requisite two-year term. Thus, the record, reviewed in its entirety, does not support a finding that the applicant's spouse and/or child will face exceptional hardship if the applicant's waiver request is denied.

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.