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

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 07 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:

[redacted]

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 record reflects that the applicant is a native and citizen of Poland who was admitted to the United States in J1 nonimmigrant exchange status on February 22, 1991. She is thus 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 presently seeks a waiver of her two-year residence requirement, based on the claim that her U.S. citizen spouse and child, born September 17, 1994, would suffer exceptional hardship if they moved to Poland temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled her two-year foreign residence requirement in Poland.

The director determined that the applicant failed to establish that her spouse and child would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Poland. *Director's Decision*, dated April 25, 2007. The application was denied accordingly.

In support of the appeal, counsel provides a brief, dated June 20, 2007. The entire record was reviewed and 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, 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 child would experience exceptional hardship if they resided in Poland for two years with the applicant. To support this contention, the applicant states the following:

> .. [the applicant's child] is now eleven years old, has grown up from her birth here in the United States, has attended all of her schooling here. She is a wonderful student and a bright and happy child...She speaks English only. She is very accustomed to the life here and unaccustomed to the life in Poland. Life in Poland would be extremely unfamiliar and foreign to her and would be dismal indeed given my lack of resources there. At very young age, she would definitely suffer a great deal of grief, emotional distress, uprooting, and lack of security...
>
> Should [redacted]r and my husband, [redacted] accompany me to Poland, the life we could provide her there would be not nearly as good as the life she now enjoys...
>
> Additionally, it will be difficult for us to find job in Poland, because the Polish society, over past fifteen years, has drastically changed and became foreign to me. Even if I find a job, my meager salary will not be enough to support myself...
>
> My husband and I are hardworking taxpayers. We ran very successful, high revenue business...It will be a lifetime setback for us if we lose our business over our return to Poland...

Declaration of [redacted], dated September 26, 2006.

The applicant's spouse further details the hardship he would face were he to relocate to Poland with the applicant. As stated by the applicant's spouse:

> ...a negative decision on my wife's application would be a 'killer' for me whether I let her go to Poland by herself with our child, so that I can stay in the United States to take care of my very sick other daughter [1], and whether I follow my wife and my

[1] The record indicates that the applicant's spouse has a 15-year old child [redacted], from a previous relationship, who suffers from bipolar disorder. The record also indicates that she resides in a residential mental treatment home in Utah. The AAO notes that no evidence has been provided to establish that this child is a U.S. citizen or lawfully resident alien, thereby qualifying for consideration under the exceptional hardship standard of section 212(e) of the Act. Moreover [redacted] is not referenced as a step-child on the applicant's Form I-612, Application for Waiver, nor is she referenced as a dependent on the applicant's and her spouse's joint federal income tax returns for 2005. Finally, no evidence has been provided from a treating physician regarding this child's medical situation and her short and long-term treatment plans, nor has any evidence been provided to establish the current physical and emotional involvement that the applicant's spouse has with this child, and the hardship she will face without the applicant's spouse's presence were he to relocate for two years.

> young daughter to Poland and tear myself away from my sick child in the United States.

Declaration of [redacted], dated September 26, 2006.

No corroborating evidence has been provided to establish that a physical absence from their community and business for two years would cause exceptional hardship to the applicant's spouse and child. While it is anticipated that the applicant's spouse and child will miss their family and friends, it has not been demonstrated that such loss would cause the applicant's spouse and/or child exceptional hardship, especially when the record establishes that the applicant and her spouse have relatives that still reside in Poland, including the applicant's parents and the applicant's spouse's two sisters and two children from a previous marriage. Nothing would prohibit the applicant's spouse and/or child from returning to the United States on a regular basis to visit family and friends residing in the United States. Moreover, no evidence has been provided to document that the applicant and her spouse, both Polish nationals, would be unable to secure gainful employment in Poland and/or that their business in the United States would suffer financial setback and/or dissolve based on their two-year absence. Finally, it has not been established that the applicant's child would be unable to attend an English-speaking school in Poland for the two-year period. 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)). In addition, the record reflects that the applicant's child has visited Poland and, therefore, has some experience with the language and culture. As such, it has not been demonstrated that the applicant's family would experience exceptional hardship were they to accompany the applicant to Poland for two years.

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

> ...My husband, and I have lived together since well before the birth of our daughter and continue to live together. and I are happily married for almost seven years. My husband is a great source of love, joy and moral; support for our child and me. Together we have worked and struggled to provide a safe, happy, healthy home and environment for our child. We are very closer-knit family. It would pain us all deeply to the close bond, between me and my family, if we were to be separated. My family will endure extreme hardship if they lose me as wife and mother.
>
> ...As a mother, I play a great role in the upbringing of our daughter. and I are very close and our separation (even temporarily) will 'kill' us both...

Supra at 3, 5.

The applicant's spouse further asserts the hardships he will face without the applicant. As stated by the applicant's spouse

> The one thing I find possible and necessary to add here is about my physical condition: In October of 1997...I sustained cumulative trauma to my neck and spine...As a result I became disabled and unable to return to work. I have never recovered from those injuries. To this day, I continue suffering from excruciating pain. I am not able to move around freely, raise or lower my head, bend my back or lift anything more than five pounds. My wife is my only support in dressing up in the morning and going to bed at night. I do not know what would I do without her being besides me everyday.

Supra at 1.

Counsel provides a psychological evaluation from [redacted], Ph.D., dated January 29, 2006, based on a seven hour evaluation conducted on March 23, 2005 with [redacted] and the applicant, her spouse, and their child. [redacted] concluded as follows:

> .. [redacted] is prone to depression and emotionality. During the turbulent years of adolescence, she should have the opportunity to live with both parents in a stable home environment...Disruption of the young adolescent's life at this developmental stage may create irreparable problems emotionally and academically.

Psychological Evaluation from [redacted] *Ph.D., Clinical and Forensic Psychology,* dated March 23, 2005.

Counsel has not provided medical documentation with respect to the applicant's spouse's current medical situation, its short and long-term treatment plan and its severity. Nor has any corroborating evidence been provided that details what specific assistance the applicant's spouse needs from the applicant. [redacted] states that the applicant's spouse "...does approximately 56 shows a year and sometimes two a weekend...he travels all over the United States to do the jewelry shows from Wednesday to Sunday; he is gone most weekends..." *Id.* at 10. As such, it has not be established that the applicant's spouse is unable to take care of himself should the applicant have to relocate for a two-year period. In addition, it has not been established that the applicant's spouse would be unable to obtain child care coverage for the applicant's child should the applicant's spouse need to travel for his business, thereby ensuring continued supervision of the applicant's child.

Finally, although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation by [redacted] is based on a single interview between the applicant's family and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse and child or any history of treatment for the disorders suffered by the applicant's spouse and child and referenced in the evaluation. Moreover, the conclusions reached in the submitted evaluation,

being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse and child will face exceptional hardship if the applicant's waiver request is denied. The AAO finds that the applicant has failed to establish that her spouse and child would suffer exceptional hardship were she to relocate to Poland while they remained in the United States and in the alternative, the AAO finds that the applicant has failed to establish that her spouse and child would suffer exceptional hardship if they moved to Poland with the applicant for the requisite 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 not met her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.