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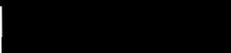


U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JUN 04 2008

(WAC 06 206 52436 relates)

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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Peru who obtained J-1 nonimmigrant exchange status in December 2000. She 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 her two-year foreign residence requirement, based on the claim that her U.S. citizen spouse, and her U.S. citizen child born in April 2003, would suffer exceptional hardship if they moved to Peru temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Peru.

The director determined that the applicant failed to establish that her spouse and/or child would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Peru. *Director's Decision*, dated June 29, 2006. The application was denied accordingly. Counsel for the applicant filed a completed Form I-290B, Notice of Appeal, on July 27, 2006.

The record establishes that the applicant filed a second Form I-612, Application for Waiver of the Foreign Residence Requirement in May 2007, which was subsequently denied by the director on September 12, 2007, and appealed timely to the AAO. The AAO has sustained said appeal and remanded it to the Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State (DOS), Waiver Review Division (WRD). Therefore, the instant appeal is moot. Thus, no purpose would be served in discussing whether the applicant has established exceptional hardship to a qualifying relative under section 212(e) of the Act, as it has already been established in a separate AAO decision. Accordingly, the instant appeal will be dismissed, the prior decision of the director is withdrawn and the instant application for a waiver of the two-year foreign residency requirement is declared moot.

**ORDER:** The appeal is dismissed, the prior decision of the director is withdrawn and the instant application for a waiver of the two-year foreign residency requirement is declared moot.