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

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 09 2008

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of the Foreign Residence Requirement of 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 The director's decision will be withdrawn and the matter remanded to the director for further action consistent with this decision.

The applicant is a native and citizen of India who was admitted into the United States as a J-1 nonimmigrant exchange visitor in July 2004. The applicant 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 government financing and the Exchange Visitor Skills List. The applicant presently seeks a waiver of her foreign residence requirement, based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to India temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled her foreign residence requirement in India.

The director concluded that the applicant failed to establish that her U.S. citizen spouse would experience exceptional hardship if the applicant fulfilled her foreign residence requirement in India and denied the Form I-612, Application for Waiver of the Foreign Residence Requirement (Form I-612) accordingly. *Director's Decision*, dated February 25, 2008.

On appeal, counsel for the applicant submitted Form I-290B, Notice of Appeal (Form I-290B), dated March 25, 2008, and requested 30 days to submit a brief and/or additional evidence. On April 21, 2008, counsel requested an extension of time to file the brief and/or additional evidence. Said extension request was granted by the AAO, not to exceed 60 days. On June 17, 2008, counsel requested a second extension of time to file the brief and/or additional evidence. The AAO was unable to grant another extension. The record is thus considered complete at this time.

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,
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> (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.

According to the record and the CIS electronic database, the applicant was approved for permanent residency status as of July 11, 2007; the applicant's Alien Registration Card was issued on July 24, 2007. However, the record does not contain any documentation that establishes that the applicant obtained a Form I-612 approval based on a recommendation from the U.S. Department of State, as prescribed by section 212(e) of the Act or, in the alternative, that she returned to her home country for a two-year period, prior to being granted permanent residency status in July 2007. Without a waiver under section 212(e) or residence in her home country for a two-year period, the applicant would not have been eligible for permanent residency status.

Therefore, as it is unclear whether the applicant obtained a waiver under section 212(e) of the Act or returned to her home country for two years prior to obtaining permanent residency status, the AAO finds it necessary to remand the present matter to the director so that she may review the file to determine the applicant's status at this time. If the applicant's permanent residency was granted to her in error, CIS records must be corrected and the instant appeal should be returned to the AAO for further review.

If, however, the applicant did obtain a waiver under section 212(e) of the Act or returned to her home country for a two-year period prior to approval of her permanent residency status in July 2007, the appeal will be dismissed, the prior decision of the director will be withdrawn and the instant application for a waiver of the two-year foreign residency requirement will be declared moot.

ORDER: The director's decision is withdrawn and the matter remanded to the director for further action consistent with the present decision.