U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 08 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom, Acting 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 Brazil who obtained J-1 nonimmigrant status in March 2006. 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 would suffer exceptional hardship if he moved to Brazil temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled her two-year foreign residence requirement in Brazil.

The director determined that the applicant had failed to establish that her U.S. citizen spouse would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Brazil. *Director's Decision*, dated May 28, 2008. The application was denied accordingly.

In support of the appeal, the applicant submits a letter, dated June 26, 2008 and a credit report with respect to the applicant's spouse. 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
>
> (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).

Section 212(e) of the Act provides that a waiver is applicable solely where the applicant establishes exceptional hardship to his or her citizen or lawfully resident spouse or child. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant cannot be considered, except as it may affect the applicant's spouse.

The first step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would experience exceptional hardship if he resided in Brazil for two years with the applicant. To support this contention, the applicant's spouse states the following:

> [redacted] [the applicant] and I have discussed the idea of both of us returning to Brazil for two years to live, but that would be at the very least our last resort. Brazil is a very beautiful Country, but I would not be able to provide for [redacted] and our family if I moved there. As an American who doesn't speak Portuguese, finding work would be very difficult. The job prospect there is very limited and construction is my only trade....
>
> If I was to move to Brazil, without speaking the language and with very limited knowledge of Brazilian culture I would have a very difficult time adjusting. [redacted] has also informed me that racism and prejudice against people of African decent [sic] is very prevalent. The only meaningful employment for people of African decent [sic] is as athletes and entertainers which I am neither.
>
> I cannot leave my country, my family, and my social and professional career to live in a country where the culture is completely different, especially the social and economic conditions....

Letter from [redacted] dated October 5, 2007.

No documentation has been provided that confirms that the applicant's U.S. citizen spouse would be unable to obtain gainful employment in Brazil. Even if the AAO were to concur with the applicant's spouse that he would be unable to obtain gainful employment in Brazil due to the language barrier, it has not been demonstrated that the applicant, a lawyer by profession, would be unable to obtain gainful employment in her home country, thereby ensuring financial viability for her and her husband. 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 applicant's spouse references the problematic economic and social conditions, namely racism for those of African descent, in Brazil. The AAO notes, however, that the U.S. Department of State has no travel warnings for Brazil, and in fact, points out that "Brazil, a nation the size of the lower 48 United States, has an advanced developing economy...." *Country-Specific Information-Brazil, U.S. Department of State,* dated February 1, 2008. Moreover, the U.S. Department of State makes no reference to problematic race relations in Brazil with respect to individuals of African descent in its *Country Reports on Human Rights Practices for Brazil-2007*. Thus, it has not been established that the applicant's U.S. citizen spouse would encounter exceptional hardship were he to relocate to Brazil based on his spouse's two-year foreign residency requirement.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would suffer exceptional hardship if he remained in the United States during the two-year period that the applicant resides in Brazil. As stated by the applicant's spouse:

> The thought of [redacted] [the applicant] returning to Brazil for two years has brought great stress and sadness to me. [redacted] and I had planned to buy a home in a few months and start a family. The news of her return has caused me to fall into a state of depression with sleepless nights. It also has affected my job as a construction worker and roofer....

Id. at 1.

As the applicant further asserts,

> [M]y husband [the applicant's spouse] works in the construction industry and presently there is a downturn in the housing market. This has resulted in us experiencing some financial hardship which we could alleviate if I am here to assist him with. We are presently sharing an apartment with roommates, which limit our conveniences....
>
> With the financial hardship that my husband is experiencing at this time, it would be hard to maintain our relationship being away from each other for two years. We have been married for just over a year and being apart from each other would only devastate the both of us....
>
> If I have to go back to Brazil, my husband would have to work by himself to maintain his lifestyle and also to support me in another country.... [E]ven having a degree in Brazil, finding a job, to start all over again, is not easy. I have left the law firm where I used to work for three years already. My knowledge is limited now, since I haven't been in my Country for so long. Laws change everyday....

Letter from [redacted] dated June 26, 2008.

With respect to the emotional hardship referenced, it has not been established that the applicant's spouse is suffering and/or will suffer exceptional emotional and/or psychological hardship were the applicant to relocate abroad for a two-year period. Moreover, the applicant has failed to document that the applicant's spouse would be unable to visit the applicant in Brazil during the two-year relocation.

As for the financial hardship referenced above, although evidence has been provided to establish that the applicant's spouse has outstanding debts, the documentation provided does not outline what specific financial contributions the applicant has made to the household and how long said debts have been in existence. The AAO notes that the applicant's spouse earned over $28,000 per year in 2006, which is well over the 2008 poverty guidelines. *See Form I-864, Affidavit of Support,* dated May 4, 2007. It has thus not been established that this type of income, without any additional financial support from the applicant, would cause the applicant's spouse exceptional financial hardship. Moreover, as previously referenced by the AAO, counsel provides no evidence to substantiate that the applicant would not be able to obtain gainful employment were she to relocate to Brazil, thereby assisting the applicant's spouse with the U.S. household expenses should the need arise. The AAO recognizes that the applicant's U.S. citizen spouse will endure hardship as a result of the temporary separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of a home residency requirement and does not rise to the level of exceptional hardship based on the record.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen spouse will face exceptional hardship if the applicant's waiver request is denied. The applicant has failed to establish that her U.S. citizen spouse would suffer exceptional hardship if he moved to Brazil with the applicant for the requisite two-year period and alternatively, the applicant has failed to establish that her U.S. citizen spouse would suffer exceptional hardship were she to relocate to Brazil while he remained in the United States. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse temporarily relocates abroad based on a foreign residence requirement.

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. The waiver application is denied.