U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: JUL 29 2014 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
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 Guyana who was admitted to the United States in J-1 nonimmigrant exchange status in 1978 and in 1981. 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) (2012), based on government financing and 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 Guyana 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 Guyana. Counsel also claims that the spouse would be subject to persecution in Guyana due to the high murder rate and violence. Lastly, counsel contends that the waiver should be granted as she obtained a letter of no objection from Guyana.

The director determined the applicant did not establish that her spouse would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Guyana. *Director's Decision*, dated January 27, 2014. The application was denied accordingly.

In support of the appeal, counsel submits a brief, a previously submitted statement from the applicant, and a letter of no objection from the Embassy of the Republic of Guyana, also previously submitted. The entire record was reviewed and considered in rendering this decision.

Section 212(e) of the Act states, in pertinent part:

> 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
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> (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, "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:

> 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 U.S. citizen spouse would experience exceptional hardship if he resided in Guyana for 2 years with the applicant. However, the applicant does not claim, on appeal or otherwise, that her spouse would experience exceptional hardship upon relocation to Guyana for 2 years.[1] Nor does the applicant provide any documentation on the impact of potential relocation. Without any assertions or evidence on this issue, we cannot find that the applicant has established her spouse would experience exceptional hardship were he to relocate to Guyana for a 2-year period.

The applicant contends her spouse would experience emotional and financial hardship without her present. She claims she and her spouse have been married since 1987, and they have not been apart since their wedding. The applicant also asserts she is the sole income earner in the household, as her spouse has been unemployed for the past 4 years, and he no longer receives unemployment benefits. A December 1, 2010, letter from the Employment Security Commission of North Carolina is submitted in support. The applicant adds that her take-home pay is $2,900 per month, and that she and her spouse have monthly expenses in the amount of $3,384. A paystub from March 2013 is present in the record. The applicant explains that she would not be able to provide financial support if she returned to Guyana, as her monthly income there would be $1,000.

The applicant has not provided documentation of their monthly expenses to support claims that her spouse would be unable to meet his financial obligations without her. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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 letter from December 1, 2010, indicating the applicant's spouse was ineligible to receive unemployment

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[1] In the October 9, 2013, Request for Evidence ("RFE") the director informed the applicant that she was required to provide evidence to demonstrate that her U.S. citizen spouse would experience exceptional hardship in two scenarios: upon relocation to Guyana for two years, and in the event of separation from the applicant for 2 years.

benefits, is insufficient to demonstrate that he is presently unemployed, and is therefore dependent on the applicant's income. Furthermore, the applicant provides no evidence to corroborate claims that she would earn $1,000 in Guyana.

The applicant has established that her spouse would experience emotional hardship upon separation. However, given the insufficient evidence on financial hardship, we cannot find that the applicant has demonstrated her spouse would experience exceptional hardship were she to relocate to Guyana to fulfill her 2-year foreign residency requirement.

Counsel asserts that the applicant does not have to complete the 2-year foreign residence requirement because the requirement was waived by the government of Guyana. However, as stated in the RFE, to obtain a waiver based on a statement of no objection the applicant must first obtain a waiver recommendation from the Department of State.[2] As the record does not reflect that the applicant has obtained this recommendation, we find that she is not eligible for a waiver based on the letter of no objection from the Embassy of the Republic of Guyana.

Counsel claims on appeal that the applicant fears persecution if returned to Guyana due to the violence and the high murder rate, and that country conditions suggest that protection from law enforcement is not available due to lawlessness.

Persecution has been defined as "…a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive." *Matter of Acosta,* 19 I&N Dec. 211 (BIA 1985). Unlike applicants for refugee or asylee status, who may establish a well-founded fear of persecution on account of five separate grounds including race, religion, nationality, membership in a particular social group, or political opinion, an applicant for a waiver under section 212(e) of the Act must establish that he or she **would be** persecuted on account of one of three grounds: race, religion or political opinion.

Counsel has not claimed or provided evidence to show that the applicant would be persecuted based on her race, religion, or political opinion; counsel only claims that she may be subject to adverse country conditions and general violence. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, we find the applicant has not met her burden of proof in demonstrating she would be persecuted on account of her race, religion, or political opinion.

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. Nor has the

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[2] For more information, please refer to http://travel.state.gov/content/visas/english/study-exchange/student/residency-waiver/eligibility.html.

applicant demonstrated she would be persecuted on account of her race, religion, or political opinion. Lastly, we find the applicant has not obtained the required waiver recommendation from the Department of State to obtain a waiver based on the statement of no objection. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.