U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28744285

Date: FEB. 20, 2024

Appeal of California Service Center Decision

Form I-612, Application to Waive Foreign Residency Requirement

The Applicant seeks a waiver of the two-year foreign residence requirement for certain J nonimmigrant visa holders. Immigration and Nationality Act (the Act) section 212(e), 8 U.S.C. § 1182(e).

The Director of the California Service Center denied the application, concluding that the record did not establish, as required, that the Applicant's compliance with the two-year foreign residence requirement would result in exceptional hardship to a qualifying relative. On appeal, the Applicant submits additional evidence and asserts that he has demonstrated exceptional hardship to his U.S. citizen spouse. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

A noncitizen admitted under section 101(a)(15)(J) of the Act who is subject to a two-year foreign residency requirement is not eligible to apply for an immigrant visa, permanent residence, or an H or L nonimmigrant visa until it is established that the noncitizen has resided and been physically present in the country of his or her nationality or last residence for an aggregate of at least two years following departure from the United States. Section 212(e) of the Act. The statute provides for waiver of this requirement, however, when it is determined that departure from the United States would impose exceptional hardship upon the noncitizen's U.S. citizen or lawful permanent resident spouse or child, and approval of the waiver is in the public interest. *Id.*

In determining the merits of an application for a waiver of the two-year foreign residence requirement based on exceptional hardship, "it must first be determined whether or not such hardship would occur as the consequence of . . . accompanying the [noncitizen] abroad, which would be the normal course of action to avoid separation." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). In addition, "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. . .[because] [t]emporary 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). . . ." *Id.*

In general, we do not apply leniency "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." *Keh Tong Chen v. Attorney General of the United States*, 546 F. Supp. 1060, 1064 (D.D.C. 1982) (quotations and citations omitted). Further, we "[effectuate] 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." *Id.*

The record establishes that the Applicant is subject to the two-year foreign residence requirement under section 212(e) of the Act. The Applicant is seeking a waiver of the two-year foreign residence requirement based on the claim that his U.S. citizen spouse would suffer exceptional hardship if she moved to Pakistan temporarily with the Applicant and, in the alternative, if she remained in the United States while the Applicant fulfilled the two-year foreign residence requirement in Pakistan. On appeal, we adopt and affirm the Director's decision with the comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

In adjudicating the Applicant's request for a hardship waiver, we first look to see if the Applicant has established that his spouse would experience exceptional hardship if she resided in Pakistan for two years with the Applicant. In the decision to deny the application, the Director determined that "[b]ased on the medical evidence submitted and country conditions," the Applicant's spouse could not accompany the Applicant back to Pakistan. We concur with the Director's determination that exceptional hardship to the Applicant's spouse on relocation has been established.

Regarding separation, the Director determined that the record did not establish that the Applicant's spouse's emotional and medical conditions would be exacerbated to the level of exceptional hardship were the Applicant to relocate abroad, or that any temporary financial difficulties caused by the Applicant's departure would result in exceptional hardship. On appeal, the Applicant again asserts that he plays a critical role in his wife's care and were he to relocate abroad, his spouse would experience emotional, medical, and financial hardship. He details that his wife underwent a kidney transplant and relies on hearing aids and he makes certain that she maintains a low-salt diet, supports her communication during her doctor's visits, and ensures she keeps her appointments and takes her medications consistently. He also explains that he recently obtained employment authorization and hopes to be able to support his spouse financially to alleviate her dependence on Social Security and family members and improve her overall financial situation. The Applicant also asserts that his spouse relies on him for emotional support and were he to relocate abroad, she would experience emotional distress and uncertainty.

On appeal, the Applicant has not sufficiently addressed or overcome the deficiencies discussed in the Director's decision regarding separation. We acknowledge the documentation on appeal, including the Applicant's spouse's June 2023 statement, the May 2023 letter in support from the Applicant's spouse's treating physician, and the employment authorization document issued to the Applicant in February 2023. However, the record establishes that the Applicant's spouse has had kidney disease for many years and received a kidney transplant in February 2015, well before she married the Applicant in 2021. She was also able to pursue, and ultimately obtain, her Master's degree in 2011 and her PhD in

December 2020, prior to marrying the Applicant. The record also indicates that the Applicant's spouse has been receiving regular monitoring and treatment by medical professionals for her condition for years. The Applicant has not established what hardships she experienced, prior to her marriage to the Applicant, to establish that without his daily presence and support, she will experience exceptional hardship. Furthermore, as noted by the Director, the Applicant and his spouse have experienced prolonged periods of separation, as the Applicant has been studying in Washington, DC while his spouse is residing in California with her mother, her brother, and her sister-in-law. While we acknowledge that the Applicant travels to California during academic breaks, the record does not establish that their periods of separation have caused the Applicant's spouse exceptional hardship.

As for the financial hardship referenced, the Applicant has not submitted any financial documentation on appeal to establish that his relocation would cause his spouse financial hardship that rises to the level of exceptional hardship. As noted by the Director, the record indicates that the Applicant's spouse has never been financially supported by the Applicant. The documentation on appeal does not suffice to establish that the Applicant's spouse would not be able to continue supporting herself and would thus experience financial hardship that rises to the level of exceptional hardship.

Lastly, as stated above, we generally do not apply leniency where marriage occurring in the United States is used to support the contention that the exchange visitor's departure from the country would cause personal hardship. Here, the Applicant and her spouse married in 2021, after the Applicant was issued the Form DS-2019 and J-1 visa in 2019, indicating that he was aware of the two-year foreign residence requirement.

After reviewing all the evidence in its totality, we conclude that the record contains insufficient evidence to establish that the hardships to the Applicant's spouse upon separation would be exceptional. Accordingly, the Applicant's waiver application will remain denied.

ORDER: The appeal is dismissed.