U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31013519

Date: MAR. 14, 2024

Appeal of California Service Center Decision

Form I-612, Application for Waiver of the Foreign Residence 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 she has demonstrated exceptional hardship to her 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 based on the Exchange Visitor Skills List. The Applicant is seeking a waiver of the two-year foreign residence requirement based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to the Philippines temporarily with the Applicant and, in the alternative, if he remained in the United States while the Applicant fulfilled the two-year foreign residence requirement in the Philippines.

In adjudicating the Applicant's request for a hardship waiver, we will first look to see if the Applicant has established that her spouse would experience exceptional hardship if he remained in the United States while the Applicant relocated abroad for a two-year period. 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 submits a statement again asserting that she plays a critical role in her spouse's care and were she to relocate abroad, her spouse would experience emotional, medical, and financial hardship.[1] She details that she provides financial support for her spouse but were she to relocate abroad, she would not be able to obtain gainful employment that would permit her to help her spouse financially in the United States. She also contends that as a result of a car accident in June 2023, her spouse is receiving medical treatment and he needs her to help him on a daily basis. Further, the Applicant's spouse asserts that her spouse is receiving mental health treatment and were she to relocate abroad, his condition would deteriorate, thereby causing him hardship.

On appeal, the Applicant has not sufficiently addressed or overcome the deficiencies discussed in the Director's decision regarding separation. While we acknowledge that the Applicant's spouse was in a car accident and is receiving treatment for his condition, the record does not establish his treatment plan, the severity of the situation, and the hardships he would experience were his spouse specifically to relocate abroad. We note that the Applicant's spouse's medical team stated in an August 28, 2023 statement that he had no limitations and was excused from "work/school until August 30, 2023," approximately two days. While we acknowledge that the medical team has submitted another statement on appeal, dated October 3, 2023, stating that the Applicant's spouse requires assistance and the Applicant provides such assistance, the medical team does not provide explanation or detail on why his conditions have changed significantly in the one-month period. Nor does the medical team place any limitations on his ability to work or attend school. As for the mental health documentation

[1] We note that the record does not contain any statement from the Applicant's spouse detailing the hardships he would experience, if any, were the Applicant to relocate abroad for a two-year period.

submitted on appeal, the extent of the Applicant's spouse's condition, the treatment plan, its effect on the Applicant's spouse's ability to work and care for himself, and the hardships were his spouse specifically to relocate abroad have not been established. We also note that the letter references the Applicant's spouse's daughter as playing a helpful role in assisting him with his anxiety and traumas. The record thus establishes that the Applicant's spouse appears to have a support network in the United States. The record also does not establish that the Applicant's spouse would not be able to travel to visit the Applicant while she fulfills the two-year foreign residence requirement abroad.

Finally, the Applicant has not submitted documentation on appeal establishing that her spouse is unable to support himself, through employment or through disability payments referenced by the Applicant. Nor does the record contain documentation establishing the Applicant's spouse's current income, if any, expenses, assets, and liabilities, to establish that without his spouse's contributions, he will experience financial hardship. The documentation on appeal does not suffice to establish that the Applicant's spouse would not be able to support himself and would thus experience financial hardship that rises to the level of exceptional hardship.

While we acknowledge the statements in the record regarding the difficulties that separation from the Applicant would cause the spouse, 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 alien's departure from the country would cause personal hardship. Here, the Applicant and her spouse married in in [redacted] 2021, after the Applicant was issued the Form DS-2019 and J-1 visa in November 2020 indicating that she 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.