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U.S. Citizenship
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FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

JUL 20 2005

LIN-04-176-50621

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:

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Romania. He was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on May 19, 2001 to participate in a summer work/travel program sponsored by American Work Experience, Greenwich, Connecticut. 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). The record reflects that the applicant married [REDACTED] (Ms. [REDACTED] a United States citizen (USC), on October 20, 2003. Ms. [REDACTED] has USC children, although the record is unclear as to the number and ages of the children. The applicant seeks a waiver of his two-year residence requirement in Romania, based on the claim that his wife and stepchildren would experience exceptional hardship if they moved to Romania with the applicant for the two years he is required to live there, or if they remained in the United States.

The director concluded that the circumstances of a two-year separation of the family with accompanying anxiety, loneliness and altered financial circumstances are the hardships to be anticipated by compliance with the two-year residence requirement, not exceptional hardships. The application was denied accordingly. *Decision of the Acting Director, Nebraska Service Center, dated December 1, 2004.*

On appeal, counsel contends that the applicant has filed a "No Objection" statement with the Waiver Review Division of the U.S. Department of State (USDOS) in St. Louis, Missouri; therefore, the Service should reverse its decision until the USDOS has considered the "No Objection" statement from Romania. In support of the appeal, counsel submitted a brief. In support of the original I-612 Application for Waiver of the Foreign Residence Requirement, the applicant submitted a letter and various financial documents. The entire record was considered in rendering this decision.

At the outset, the AAO notes that the record contains no evidence of a "No Objection" statement from Romania, nor does it contain evidence that the USDOS Waiver Review Division has considered such a statement.

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 at 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 the Immigration and Naturalization [now, the Director of 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, "[E]ven 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)."

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.)

I. Potential Hardship if Ms. [REDACTED] and the Children Accompany the Applicant to Romania

First analyzed is the potential hardship Ms. [REDACTED] and the children will experience if they relocate to Romania with the applicant for the two years he is required to live there. Ms. [REDACTED] and the children do not speak Romanian, are unfamiliar with Romanian culture, and would be forced to separate from family and friends. Accordingly, the applicant has demonstrated that his wife and stepchildren would experience exceptional hardship if they relocated to Romania for two years.

II. Potential Hardship if Ms. [REDACTED] and the Children Remain in the United States

Next examined is the potential hardship to Ms. [REDACTED] and the children if they stay in the United States during the two years the applicant is required to live in Romania. The applicant stated that his wife would be unable to support the family, and that she would be forced to get another job, which would leave her little time to spend with the children. The applicant presented no evidence to establish that his wife could not support herself and the family for two years. The fact that Ms. [REDACTED] would not be able to spend as much time with the children is a normal result of such a separation and does not constitute exceptional hardship.

The applicant further stated that the emotional stability of the family would be at risk:

My wife, stepkids and I have lived together for over a year and a half now and we love each other very much. I don't believe being away from my wife and stepkids would be healthy for our family.

The AAO recognizes that a two-year separation would cause emotional strain, however, the applicant has not established that the effect goes beyond what is normally associated with such a separation.

III. Conclusion

The AAO finds that the evidence in the record establishes that the applicant's wife and stepchildren would experience exceptional hardship if they traveled to Romania with the applicant. The AAO also finds that the evidence in the record fails to establish that the applicant's wife and stepchildren would experience exceptional hardship if they remained in the United States while the applicant returned temporarily to Romania.

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 his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.