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U.S. Citizenship
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Services

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MAR 23 2005



FILE:



Office: VERMONT SERVICE CENTER Date:

IN RE:



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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Director, Vermont 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 and citizen of Colombia. He was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on September 26, 2000 to pursue graduate medical training at the University of Kentucky Medical Center in Lexington, Kentucky. 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's wife is a Colombian citizen, and that they have a United States Citizen (USC) child, Emmanuel (born June 21, 2001). The applicant seeks a waiver of his two-year residence requirement in Colombia, based on the claim that his son would suffer exceptional hardship if he accompanies the applicant to Colombia.

The Director found that the record did not establish that the applicant's departure from the United States would impose exceptional hardship upon his son. The application was denied accordingly. *Decision of the Acting Director*, Vermont Service Center, Saint Albans, Vermont, dated April 20, 2004.

On appeal, the applicant contends that his son will experience exceptional hardship if the family moves to Colombia for two years. In support of the appeal, the applicant submitted his statement and a letter from the Prosecutor's Office in Medellin, Colombia regarding the kidnapping of the applicant's brother. The entire record was 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 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 *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.)

At the outset, the AAO notes that the applicant's son is three years old. The applicant's wife is a citizen of Colombia and does not have legal status in the United States. If the applicant's waiver is denied, the entire family will have to move to Colombia. As it cannot be expected that a minor child would be left in the United States without his parents, this decision only addresses the potential hardship that the applicant's son will experience in Colombia.

The applicant maintains that because of the dangerous conditions in Colombia, his son will experience exceptional hardship if he lives there for two years. The applicant cited statistics

concerning the rate of child kidnapping and child murder, and the number of children who are fighting for the guerillas or the paramilitaries in the armed conflict. The applicant did not explain how these general statistics relate to his three-year old son or whether the risk is equal in every part of Colombia. The applicant and his wife are educated professionals who presumably have some flexibility in where they live in Colombia. The statistics on child combatants relate to children much older than the applicant's son.

The applicant stated that his brother was kidnapped on July 27, 2001. The applicant contends that this is evidence that he, his wife, and their son are at risk of being kidnapped. The record contains a May 13, 2004 letter from the Medellin Prosecutor's Office that stated that [REDACTED] (the applicant's brother) and others were kidnapped in Ventanas, in the Jurisdiction of the Municipality of Yarumal, Antioquia. The letter described the kidnappers as unknown criminals apparently belonging to the Revolutionary Armed Forces of Colombia, a guerilla group. The applicant has not established that this kidnapping places himself, his wife, or their son at greater risk of being kidnapped. First, the applicant is not required to live in the area where his brother lives. Second, the record indicates that the applicant's brother was the Regional Director of the Highway Department in Medellin. It appears that the brother was at particular risk because of his relatively high profile government position in one of the most dangerous areas of Colombia.

Accordingly, the AAO finds the applicant has not established that his United States citizen son will experience exceptional hardship if the family lives in Colombia for two years.

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 met not met his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.