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U.S. Citizenship
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[Redacted]

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FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

NOV 15 2005

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 citizen of the Ukraine who 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 applicant was admitted to the United States in J1 nonimmigrant status on January 17, 1995. The applicant's daughter is a U.S. citizen and she presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to her daughter, fear of persecution upon return to the Ukraine and issuance of a no-objection letter from the Ukrainian government.

The director determined that the applicant lacked the required relationship for a waiver of the two-year foreign residence requirement. *Director's Decision*, dated March 18, 2005. The application was denied accordingly.

On appeal, counsel asserts that the applicant's daughter should be considered a child, the director discounted relevant career hardship for the applicant and the director failed to address the no-objection component of the waiver application. *Letter in Support of Appeal*, dated April 13, 2005.

The record includes, but is not limited to, letters from counsel, psychological evaluations for the applicant and her daughter and information on the Ukraine. The entire record was considered in rendering this decision.

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

- (e) 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 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.

Section 101(b)(1) of the Act states, in pertinent part:

The term "child" means an unmarried person **under twenty-one years of age** who is...

The record reflects that the applicant's daughter was born on August 2, 1980. Therefore, the applicant's daughter is older than twenty-one and is not considered a child for immigration purposes. Counsel asserts that psychological reports indicate that the applicant's daughter should continue to be considered a child. *Letter in Support of Appeal*. The AAO finds that this contention has no legal merit. Furthermore, the AAO notes that hardship to the applicant is only relevant to the extent it contributes to a qualifying relative's exceptional hardship. As there is no qualifying relative, counsel's contention that the director inappropriately treated career hardship to the applicant is not relevant.

Section 212(e) of the Act also permits a waiver if the applicant would be subject to persecution on account of race, religion, or political opinion if she returned to the Ukraine. The record includes a statement by the applicant where she states that the OVIR director in the Ukraine found out that she was living in the United States and threatened her daughter that he would kill the applicant if she returned to the Ukraine. *Applicant's Statement*, at 2, undated. The applicant states that she would be viewed as an American agent in the Ukraine and harmed due to political reasons. *See id.* No other contentions are made on this issue. As such, the record lacks sufficient detail and documentation to establish that the applicant would be subject to persecution on account of race, religion, or political opinion if she returned to the Ukraine.

Lastly, counsel notes that the director failed to address the no-objection component of the waiver application. *Letter in Support of Appeal*. The record includes a letter from the Embassy of Ukraine which states that they have no objection to granting a waiver of the two-year home country requirement. *Letter from Ukrainian Embassy*, dated April 17, 1997. However, there is no indication that the U.S. State Department received this letter from the embassy. There is no evidence in the record that the U.S. State Department adjudicated the

case or forwarded their recommendation to U.S. Citizenship and Immigration Services. Therefore, the applicant is not eligible for a waiver based on a no-objection letter from the Ukraine.

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 her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.