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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: AUG 16 2006

IN RE:

Applicant:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center denied the waiver application. The matter 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 France 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 into the United States as a J-1 nonimmigrant exchange visitor on May 13, 2003. She departed the United States on September 1, 2003. She returned to the United States on September 14, 2004. The applicant seeks a waiver of the remainder of her two-year foreign residence requirement in France, based on the claim that her U.S. citizen husband will suffer exceptional hardship if she is required to fulfill her foreign residence requirement.

The director concluded the applicant had failed to establish that her husband would suffer exceptional hardship whether he joined her in France or remained in the United States while the applicant fulfilled her J-1 foreign residence requirement. The application was denied accordingly.

On appeal, the applicant asserts that fulfilling the foreign residence requirement would put her marriage in danger, causing great financial and emotional stress on her husband.

The entire record has been reviewed in reaching 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 medical education or training, [s]hall 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 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. . . 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 (Board, BIA) stated:

[I]t must first be determined whether or not such hardship would occur as the consequence of her accompanying him abroad, which would be the normal course of action to avoid separation. The mere election by the spouse to remain in the United States, absent such determination, is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed. Further, 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. 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), supra."

In *Matter of Bridges*, 11 I&N Dec. 506 (BIA 1965), the Board stated:

In determining the merits of an application for a waiver of the foreign residence requirement, we must consider the Congressional intent of the statute . . . the Subcommittee reiterates and stresses the fundamental significance of a most diligent and stringent enforcement of the foreign residence requirement. The report states, "It is believed to be 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 this country would cause personal hardship."

The record indicates that the applicant's husband is employed by the United States Department of Interior as a Park Ranger. The position was a term position, without insurance benefits and with an annual salary of about \$31,000.00 in 2005. See, *Notification of Personnel Action*, May 18, 2005. The applicant was employed as a hotel guest services agent receiving an hourly wage of \$10.00 per hour in 2005. See, *Wage and Earnings Statement*, September 23, 2005. Her position includes medical insurance benefits for herself and her husband. The applicant stated that she and her husband have endured considerable expenses during the immigration legal process. If the applicant's husband chooses to remain in the United States while his wife fulfills her residence requirement, the loss of her contribution in wages and medical insurance would represent a hardship to her husband but the circumstances are not exceptional. There is no evidence in the record indicating that the applicant's husband, a college graduate, would be unable to secure permanent employment with benefits. There is no evidence to indicate that the applicant's husband has any medical or emotional illnesses or diseases that require expensive care or the assistance of his wife for the one-year period that she is required to reside in France. While the applicant's husband will suffer financial detriment if his wife must depart the United States for a year, the record indicates that he earns sufficient income to support himself.

There also is no evidence in the record to indicate that, were the applicant's husband to join his wife in France for a year, he would experience any financial or other hardship. There is no evidence in the record regarding the availability of employment for the applicant or her husband in France. There is no evidence in the record concerning whether the applicant and her husband would receive the support of family in France. The applicant states that fulfilling the remaining one-year of her residence requirement would put her marriage in danger because it would separate her from her husband. *Letter of* [REDACTED] January 23, 2006. No evidence was offered to demonstrate why the applicant's husband could not join her in France for all or part of the year.

While the evidence does indicate that the residence requirement would strain the family finances and the possible resulting separation could strain the marriage, the applicant has not demonstrated that her husband faces hardship that could be described as exceptional. Therefore, the applicant has not demonstrated eligibility for a waiver of the residence requirement.

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.