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Office: CALIFORNIA SERVICE CENTER

Date: JUL 12 20

IN RE:



APPLICATION: Application for Waiver 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, Director  
Administrative Appeals Office

**DISCUSSION:** The Service Center Director, Laguna Niguel, CA denied the waiver application. The Administrative Appeals Office (AAO) in Washington, DC dismissed the appeal. The matter is now before the AAO on motion to reopen. The motion will be granted and the previous decisions affirmed.

The applicant is a native and citizen of Peru who is subject to the two-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(e). She was admitted to the United States in J-1 nonimmigrant status on August 11, 2000. The applicant's spouse and child are U.S. citizens. She seeks waiver of the two-year foreign residence requirement to remain in the United States with her husband and child.

The director and AAO both determined that the applicant failed to establish that her husband or child would experience exceptional hardship if she fulfilled her two-year residence requirement in Peru. The AAO also noted that counsel had indicated that she would be filing a brief to support the appeal, but that no brief had been received. *Decision of the AAO*, November 29, 2005. Subsequently, counsel submitted a copy of a brief by facsimile to the AAO, stating that the brief had been filed with the California Service Center in timely fashion. *See, Letter from Counsel*, November 29, 2005. The AAO did not have access to this brief when it issued its initial decision. Additionally, the applicant filed a Motion to Reopen claiming that she had received ineffective assistance from counsel and indicating that she had filed a complaint with the California Service Center. *See, Motion to Reopen*, December 28, 2005. Since both the information submitted with the motion and counsel's brief are relevant to whether the applicant's husband and child will suffer exceptional hardship if she must return to Peru to fulfill her two-year residence requirement, and since that information was not available when the initial decision was issued, the motion is granted.

The entire record, including documents created or submitted for the initial I-612 application and appeal as well as the documents submitted not available when the previous decisions were issued, have been reviewed and considered in making this decision.

Section 212(e) of the Act, 8 U.S.C. 1182(e), states in pertinent part:

(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 (USIA) 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 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.

In *Matter of Bridges*, 11 I&N Dec. 506 (BIA 1965), the Board of Immigration Appeals (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."

*Matter of Bridges* states further that, "[t]emporary separation 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 *Huck v. Attorney General of the U.S.*, 676 F. Supp. 10 (D.D.C. 1987) the U.S. District Court, District of Columbia, stated that the Immigration and Naturalization Service (INS, now CIS) must consider the totality

of circumstances when making a 212(e) waiver exceptional hardship determination. (Citing *Slyper v. Attorney General*, 576 F.Supp. 559, 560 (D.D.C. 1983) and *Ramos v. INS*, 695 F.2d 181, 189 (5<sup>th</sup> Cir. 1983)).

In *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals stated that, "Therefore, it 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 summary, the brief from counsel and motion to reopen indicate that the applicant's spouse and two-year-old son are U.S. citizens who were born and have lived their entire lives in the United States. The applicant's husband is the sole income earner for the family while the applicant stays home to care for their son. While the applicant's parents and siblings live in Peru, the applicant's husband has no contacts in the country and does not speak Spanish. He would have no job prospects in a country that is much poorer than the United States because of his inability to speak Spanish. Further, Peru experiences violence at the hands of the Shining Path guerrillas and drug traffickers, and women are at risk of rape and other violent crimes. See, *Counsel's Brief, Department of State, Country Report on Human Rights* and *Department of State, Consular Information Sheet*. The applicant is a pre-school and English teacher. She is disabled, and faces difficulty finding employment and earning a living sufficient to support herself and her family in Peru. The applicant's child would face difficulty finding English speaking care and schooling in Peru. She would be living in more impoverished conditions than she enjoys in the United States. She faces possible separation from either her father, if she joins her mother in Peru or her mother if she stays with her father. If she stays in the United States with her father, she also will spend a considerable amount of time in day care.

Much of the information above is found in the attorney's brief and is largely unsupported. The record does not include copies of income tax returns, analyses of the employment market in Peru or any indication of the wealth of the applicant's family or their willingness to help her if she returns to Peru. The statement that the applicant's husband could not find work in Peru because he does not speak Spanish is logical, given that Spanish is the primary language in Peru, a country that is generally poor, but the statement is not supported by objective evidence. Factual information provided by an attorney that is not supported by another source is accorded very little weight. However, in this case, even taking the unsupported statements at face value, the applicant has failed to demonstrate that her husband and child face exceptional hardship if she fulfills her two-year residence requirement in Peru. The applicant may face considerable difficulty if she returns to Peru because she is disabled, but the law does not allow consideration of the applicant's hardship to factor into the eligibility determination. While the applicant's husband and son face either separation from their spouse and mother or a difficult relocation in a country that is poor, violent, and culturally different than the United States, and while the family's financial situation will be worsened regardless of whether the applicant's husband stays in the United States or returns to Peru, there is nothing in the record to indicate that they face anything more than what would be expected given the applicant's two year residence requirement. It is also noted that while the evidence indicates Peru can be a violent country and a difficult place for a woman, the evidence is insufficient to conclude that the applicant faces persecution if she returns to Peru.

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).

The record does not indicate that the applicant's spouse and child face a degree of hardship greater than the "anxiety, loneliness, and altered financial circumstances ordinarily anticipated" from the applicant's required return to Peru 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 not met her burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.