



U.S. Citizenship
and Immigration
Services

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HB

FILE:

Office: NEBRASKA SERVICE CENTER

Date: NOV 30 2006

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:

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 waiver application and a subsequent motion to reopen the waiver application were denied by the Acting Director, Nebraska Service Center, and the application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Senegal 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 in J1 nonimmigrant exchange status on August 24, 2000. The applicant presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to his U.S. citizen spouse and based on a no objection letter from the government of Senegal.

The acting director determined that the applicant failed to establish his spouse would experience exceptional hardship if he fulfilled the two-year foreign residence requirement in Senegal. *Acting Director's Decision*, dated April 12, 2005. The applicant's waiver application was denied accordingly. The applicant filed a motion to reopen, which included a no objection letter, and the case was denied as the applicant failed to establish his spouse would experience exceptional hardship or that he would face persecution in his home country. *Acting Director's Second Decision*, dated July 1, 2005.

On appeal, counsel asserts that no statutory or other legal support has been provided for the position that an applicant must meet the exceptional hardship requirement when the basis for seeking a waiver is a no objection letter. *Form I-290B*, dated August 2, 2005.

The record includes, but is not limited to, the applicant's statement and a no objection letter. 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 [now, Department of State Waiver Review Division] 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.

Counsel contends that no statutory or other legal support has been provided for the position that an applicant must meet the exceptional hardship requirement when the basis for seeking a waiver is a no objection letter and that the acting director has not indicated that there is any kind of opposition to the applicant's no objection letter from any source whatsoever. *Form I-290B*. A clear reading of section 212(e) of the Act does not reflect that an applicant must meet the exceptional hardship requirement when the basis for seeking a waiver is a no objection letter. A no objection letter can be the sole basis for a waiver of the two-year requirement, however, this requires a favorable recommendation from the director of the U.S. Department of State Waiver Review Division. The record does not include a favorable recommendation from the director, therefore, the two-year requirement cannot be waived based on the no objection letter.

Next, the AAO will evaluate the applicant's exceptional hardship claim.

The first step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship upon relocation to Senegal for the two-year period. This requirement is not addressed in the record. As such, the AAO finds that the applicant has failed to establish that his spouse would suffer exceptional hardship upon relocation to Senegal for the two-year period.

The second step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship upon remaining in the United States during the two-year period. The applicant states that his spouse is struggling to pay her rent, he is working two jobs to help make ends meet and he will help her get into college. *Applicant's Statement*, undated. The record does not include supporting evidence of the applicant's spouse's financial state. In addition, there is no other evidence that she would face exceptional hardship. The applicant has not established exceptional hardship to his spouse should she remain in the United States during the two-year period.

The burden of proving eligibility for section 212(e) relief rests with the applicant. *See Section 291 of the Act, 8 U.S.C. § 1361.* The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.