U.S. Department of Homeland Security
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PUBLIC COPY

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: CLEVELAND, OH Date: OCT 0 6 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Cleveland, Ohio, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot.

The record reflects that the applicant is a citizen of Syria who was 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 last admitted to the United States in J1 nonimmigrant exchange status on October 26, 1995. The applicant's spouse and two sons are U.S. citizens and the applicant seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to them.

The district director determined that the applicant failed to establish his spouse or children would experience exceptional hardship if he fulfilled the two-year foreign residence requirement in Syria. *District Director's Decision*, dated March 3, 2006. The application was denied accordingly.

On appeal, counsel asserts that the district director did not consider the economic, physical, emotional, educational and health effects that the applicant's departure would have on the qualifying relatives. *See Form I-290B*, dated March 28, 2006.

The record includes, but is not limited to, counsel's brief and the applicant's immigration documents. 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
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> > (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 District director of the United States Information Agency [now the District director, U.S. Department of State, Waiver Review Division (WRD), "District director"] 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
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> > (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 District 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 District 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 District director a statement in writing that it has no objection to such waiver in the case of such alien.

The record reflects that the applicant received lawful permanent residence on June 9, 2000. *Lawful Permanent Resident Card of* [redacted] dated June 9, 2000. At the time of adjustment of status, he had not complied with the two-year residency requirement or been granted a waiver of the requirement.[1] However, as the applicant is currently a lawful permanent resident and there is no evidence to the contrary, the waiver application is moot.

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, no purpose would be served in adjudicating a waiver of the two-year residency requirement as the applicant is a lawful permanent resident. Accordingly, the appeal will be dismissed as moot.

ORDER: The appeal is dismissed is moot.

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[1] The applicant requested a waiver of the two-year requirement on or about October 26, 1996 and received an advisory opinion from the U.S. Department of State, dated December 30, 1996, indicating that he was not subject to the two-year requirement. The applicant only submitted one of his IAP-66 forms (D190852), although the submitted Form IAP-66 indicated he was subject to the requirement based on the exchange-visitor skills list. CIS requested an advisory opinion, including five other IAP-66 forms with the request, and on May 20, 2004 the U.S. Department of State found that he was subject to the two-year requirement.