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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[redacted]

FILE:

[redacted]

Office: NEBRASKA SERVICE CENTER

Date: APR 03 2007

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 Acting 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 native and citizen of Cameroon 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 J-1 nonimmigrant exchange status on October 5, 2000. The applicant seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to her U.S. citizen spouse and three U.S. citizen children, and her fear of persecution by the Cameroonian government on account of political opinion.

The acting director determined that the applicant failed to establish that a qualifying relative would suffer exceptional hardship and the application was denied accordingly. *See Acting Director's Decision*, dated November 20, 2006.

On appeal, counsel asserts that the acting director erroneously denied the waiver as a matter of law and fact. *Form I-290B*, received December 19, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statement, affidavits from friends of the applicant, an evaluation from the applicant's social worker, financial records and information on Cameroon. 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 the Director, U.S. Department of State, Waiver Review Division (WRD), "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
 - (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(I): 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 asserts that the acting director applied the standard of extreme hardship, rather than the correct standard of exceptional hardship. *Brief in Support of Appeal*, at 4, undated. The AAO notes that the decision mentions both exceptional and extreme hardship. *Acting Director's Decision*, at 1-3. The correct statutory standard is exceptional hardship; therefore, this is the standard that will be applied in evaluating the applicant's case.

The first step required to obtain a waiver based on exceptional hardship is to demonstrate that a qualifying relative would suffer exceptional hardship upon relocation to Cameroon for two years. Counsel states that the unemployment rate is high in Cameroon and the applicant and her spouse would face grave difficulty in finding employment and supporting their children. *Brief in Support of Appeal*, at 5. However, the record does not include substantiating evidence of the unemployment rate in Cameroon or the inability of the applicant or her spouse to find employment. Counsel states that the healthcare and education system in Cameroon are extremely poor compared to the United States. *Id.* The record does not provide sufficient evidence to assess the educational system in Cameroon. The record reflects that medical facilities in Cameroon are extremely limited. *Department of State Consular Information Sheet, Cameroon*, at 4, dated July 27, 2006. Although it may cause difficulty to have limited options with medical facilities, there is no evidence that that applicant's family could not receive adequate treatment at the available medical facilities in the event of illness. The record includes country conditions information addressing U.S. citizens traveling to Cameroon of security concerns and high levels of crime. *Id.* at 2-3. Although the record reflects that U.S. travelers should take precautions in Cameroon, it does not establish the conditions that would be faced by the applicant's family upon relocation to Cameroon. The record also includes a UNICEF comparison of nutrition, health and education between the United States and Cameroon which reflects the differences between the two countries. The record reflects that the applicant's qualifying relatives may face difficulties in Cameroon, however, a review of the record does not establish exceptional hardship to any of them.

The second step required to obtain a waiver based on exceptional hardship is to demonstrate that a qualifying relative would suffer exceptional hardship upon remaining in the United States during the two-year period.

Counsel states that the applicant's spouse would not be able to work and care for the children at the same time. *Brief in Support of Appeal*, at 5. Counsel states that due to financial constraints, the applicant's spouse would not be able to hire help to care for the children, pay the mortgage and help support the applicant in Cameroon. *Supra*. Counsel states that the applicant's spouse lost her job, suffers from psychological ailments and this contributes to the psychological ailments of her spouse and children. *Id*. The applicant states that she and her spouse live paycheck to paycheck, she is closer to her children than is her husband and knows what is better for them, and she teaches them how to read, pray and keep up their hygiene. *Applicant's Statement*, at 2-3, dated August 26, 2004. The applicant's spouse details the financial, emotional and logistical hardships he would face without the applicant. *Applicant's Spouse's Statement*, at 1-2, dated February 7, 2007. The applicant's spouse states that they have no family to help them. *Id*. The applicant's and applicant's spouse's physician states that the applicant's spouse is not as good a parental figure as the applicant, the children's well-being would suffer and they have no family in the region that could help them should the applicant's spouse become ill. *Letter from [REDACTED] M.D.*, dated January 17, 2007. The record reflects the applicant has been treated for depression since March 11, 2004. *Psychological Evaluation*, at 1, dated January 30, 2007. The record includes letters from family friends which detail the emotional and financial difficulties of the qualifying relatives upon separation from the applicant. The record includes evidence of the applicant's spouse financial expenses and savings which reflect that his family may face significant financial difficulty without the applicant's income. However, as the applicant's income is not clear from the record, the AAO is unable to make this finding. In regard to emotional hardship, the type of emotional hardship described in the record for the applicant's qualifying relatives is a common result of separation. Based on the record, the AAO finds that exceptional hardship to a qualifying relative has not been demonstrated.

In regard to the claim of persecution, counsel asserts that the applicant was previously persecuted by the Cameroonian government for her activities with the opposition political organization the Southern Cameroon National Council (SCNC), the human rights record of the Cameroonian government is poor, the Cameroonian government arrests, tortures, and detains SCNC members, and the applicant would face political persecution as an SCNC member if she returned to Cameroon. *Brief in Support of Appeal*, at 4. The record includes evidence that members of the SCNC have been subject to abuse by the Cameroonian government. *Cameroon Country Reports on Human Rights Practices-2005 Department of State; Cameroon, Amnesty International*, January-December 2005; *The Post Online*, (<http://www.postonline.com>), dated January 22-February 6, 2007. The applicant states that she underwent extreme physical, mental and psychological torture due to her support of the SCNC. *Applicant's Statement*, at 1, dated August 26, 2005. The record does not include substantiating evidence of the applicant's membership in the SCNC or detailed, credible testimony of the physical, mental and psychological torture she claims to have suffered. As such, the record does not reflect that the applicant would be subject to persecution based on her political opinion if she returned to Cameroon. The AAO also notes that the legal standard "would be subject to persecution" is higher than the "well-founded fear" legal standard in asylum cases.

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 his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.