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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 17 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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California 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 citizen of Western Samoa 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 J1 nonimmigrant exchange status on January 16, 1992. The applicant presently seeks a waiver of his two-year residence requirement, based on the claim that his U.S. citizen spouse and six young children would suffer exceptional hardship if they moved to Western Samoa temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Western Samoa.

The director determined that the applicant failed to establish that his spouse and children would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Western Samoa. *Director's Decision*, dated May 9, 2007. The application was denied accordingly.

In support of the appeal, the applicant provides the following documentation: a letter from the applicant, dated May 31, 2007; documentation regarding his employment in the United States; letters acknowledging the applicant and his work as a physician; community support letters; photos of the applicant and his family; extracts of an evaluation from [REDACTED], Ph.D., Clinical Psychologist, regarding the adoption of the applicant's eldest child, [REDACTED]; an evaluation from [REDACTED] LPC, Grant and Associates, dated May 31, 2007; a copy of the applicant's youngest child's, Nyla's, birth certificate; a letter from Dr. [REDACTED] stating that the applicant's spouse is under extended post partum, dated May 30, 2007; and evidence of the applicant's request for assistance from his congressional representative with respect to his status in the United States.

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, 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 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 *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 first step required to obtain a waiver is to establish that the applicant's spouse and children would experience exceptional hardship if they resided in Western Samoa for two years with the applicant. To support this contention, the applicant states the following:

I married a good woman. She is a fourth-generation resident of the Yuba County town of Marysville, California. She has traveled to numerous continents, and yet, due to a very strong sense of family ties, she has resided in Marysville all of her 41 years, as does our family now. We live around the corner from her only sibling, his wife and their four young children, with whom our children have established sibling-like and very positive bonds. We also live four city blocks from my wife's parents, who she and our son lived with in his infancy and toddler years, and who spend much time with and are very attached to the children, as well.

...Prior to our marriage, my wife devoted nearly fifteen years to serving this community...she established strong friendships, mentor relationships and has lasting marks of her commitment to the schools, hospitals, emergency response agencies, children and adults of the area...Our children are enjoying being involved in the same activities...She now devotes her time to raising our children (ages: infant, 2, 4, 5, 6 and 8 yrs.), computer graphics and design for our office, and helping in the community where she can...

Letter from Faafofouina Salapi Afato, M.D., dated May 31, 2007.

No corroborating evidence has been provided to establish that a physical absence from their community and familial network for two years would cause exceptional hardship to the applicant's spouse and children. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). While it is anticipated that the applicant's spouse and children will miss their relatives and community, it has not been demonstrated that such loss would cause the applicant's family exceptional hardship. Nothing would prohibit the applicant's family from returning to the United States on a regular basis to visit their relatives or in the alternative, from having said relatives visit the applicant and his family in Western Samoa. As such, it has not been demonstrated that the applicant's family would experience exceptional hardship were they to accompany the applicant to Western Samoa for two years.

The second step required to obtain a waiver is to establish that the applicant's spouse and children would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in Western Samoa. The applicant asserts that the applicant's family would suffer financial, emotional and psychological hardship due to the applicant's two-year absence. As stated by the applicant,

I work full-time...I am the sole financial provider of my home. My wife, Shari, is a full-time housewife. She cares for our children, as well as our home while I am at work. My family is able to have full medical insurance/coverage through my employment...I pay for our mortgage and car payments every month, as well as my family's living expenses. I provide for their day-to-day needs. In addition to providing for my immediate family, I also provide financial assistance to my elderly parents and to my siblings on an ongoing basis.

Declaration from Faafouina Afato, dated September 10, 2003.

The applicant has six young children. The applicant's spouse cares for the children while the applicant works as a physician. Moreover, the record indicates that the applicant's spouse had high-risk pregnancies. The applicant provides a letter from the applicant's spouse's doctor, stating that the applicant's spouse is under extended post partum due to maternal age. *Letter from Dr. [REDACTED], dated May 30, 2007.* As such, the record establishes that the applicant's family relies on the applicant for financial support and the applicant's absence for a two-year term would cause exceptional financial hardship as the applicant would lose his income and his insurance coverage would cease for him and his family.

Moreover, the applicant's family would experience emotional and psychological hardship were the applicant to reside in Western Samoa for two years while his family remained in the United States. To support this contention, the applicant provides an evaluation from [REDACTED] LPC that states that the loss of either parent "...would greatly increase the likelihood that this stable young boy [the applicant's adopted eldest child, [REDACTED]] would begin to display attachment disorder tendencies...These children are currently thriving and appear to be secure and emotionally healthy in their current environment. To disrupt that, specifically at such a young age, could have negative and irreversible psychological consequences..." *Letter from [REDACTED] LPC, Grant & Associates, dated May 31, 2007.*

Dr. [REDACTED] Clinical Psychologist, affirms the statements made by [REDACTED] LPC. As stated by Dr. [REDACTED] specifically in reference to Pete, the applicant's adopted child, "...he has a secure attachment to his parents and is able to separate from them for brief periods of time...However, he is at an age when it is very important to maintain the parent-child bond. If he was to be separated from his fos/adopt parents, he is likely to suffer significant long-term and short-term emotional detriment. He needs to remain in a stable and emotionally supportive family environment..." *Evaluation from [REDACTED] Ph.D.*

Based on the financial and emotional hardship that the applicant's family would face were the applicant physically absent from their lives for a two-year term, it has been established that the applicant's spouse and children would suffer hardship beyond the anxiety and loneliness ordinarily anticipated from a two-year separation. Their hardship if they remained in the United States for two years without the applicant would go significantly beyond that normally suffered upon the temporary separation of a father/spouse from his wife and children.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse and children will face exceptional hardship if the applicant's waiver request is denied. While the AAO finds that the applicant has established that his spouse and children would suffer exceptional hardship were he to relocate to Western Samoa while they remained in the United States, the AAO finds that the applicant has failed to establish that his spouse and children would suffer exceptional hardship if they moved to Western Samoa with the applicant for the requisite two-year term.

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.