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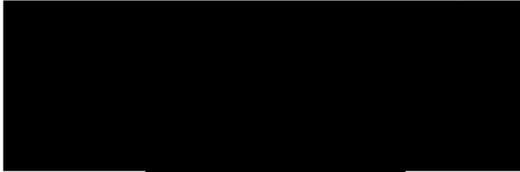
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

DEC 17 2007

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:

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, 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 Malaysia 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 in 2001. The applicant presently seeks a waiver of her two-year residence requirement, based on the claim that her U.S. citizen spouse and two young children would suffer exceptional hardship if they moved to Malaysia temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled her two-year foreign residence requirement in Malaysia.

The director determined that the applicant failed to establish that her spouse and children would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Malaysia. *Director's Decision*, dated May 21, 2007. The application was denied accordingly.

In support of the appeal, the applicant provides a letter, dated May 31, 2007. The entire record was reviewed and 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, 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 Malaysia for two years with the applicant. To support this contention, the applicant states the following:

...If Martin [the applicant's spouse] was forced to quit his job and move to Malaysia, he would be unable to find a job in Malaysia for a host of reasons; he does not have a college degree and foreigners have a bad time finding work because of the employment policies in Malaysia. Malaysia practices a race-based labor policy that dictates almost all spheres of life in Malaysia, particularly in the awarding of jobs....And when we return to the U.S. after two years, we would be starting with no money, no place to live, and no work. Martin has a good job here in Minnesota and works so hard to provide for the family...

For my children, it would be so hard for them to grow up in a foreign country...when they do not speak Malay. Anti-Americanism is especially bad right now...I am afraid my children would be isolated and persecuted by other children for being Americans. Likewise, children of Westerners are in danger of kidnapping, which is rampant in Malaysia...

Letter from [REDACTED] *dated January 2007.*

The applicant's spouse corroborates the above concerns. As stated by Martin Pease,

...Moving to Malaysia would force me to put my career on hold and quit my job. I have been told informally by employers in Malaysia (both U.S. owners and Malay owned) that they have a difficult time hiring non-citizens due to the Malaysian government's labor rules that push for full employment of the Malay population. Also, I do not hold a college degree; in Malaysia, a college degree is necessary to get any sort of decent job. I have been planning to pursue a BA degree from one of the local universities here in Minnesota, but the J-1 waiver would put this plan on indefinite hold...

I have family obligations here in Minnesota that prevents me from leaving. My father, [REDACTED] has been diagnosed with Post Polio Syndrome, and he is being forced to take Social Security disability because he can't work any more and spends more and more time in a wheelchair. I help my father with keeping the house kept up, including yard work, shopping, and general chores...

Letter from [REDACTED] *dated January 2007.*

To begin, no corroborating evidence has been provided to establish that the applicant's spouse's physical absence for two years would cause exceptional hardship to his father. As the record indicates, the applicant's spouse's mother does not work outside the home and it has not been established that she is unable to assume

many of the responsibilities that the applicant's spouse handles at this time. No letter from a medical professional has been provided that explains the applicant's spouse's father's medical situation, the long and short-term treatment plan, the gravity of the condition, and the nature of the assistance the applicants' spouse's father needs from the applicant's spouse specifically. While the applicant's spouse's father may need to make alternate arrangements with respect to his daily care, it has not been shown that such alternate arrangements would cause exceptional hardship to the applicant's spouse. The AAO notes that nothing would prohibit the applicant's spouse from returning to the United States on a regular basis to visit his parents, or from hiring a local caretaker to check in on his parents on a regular basis and assume some of the responsibilities that the applicant's spouse has been taking care of prior to his two-year absence.

Moreover, no corroborating evidence has been provided regarding the employment situation in Malaysia to document that the applicant's spouse specifically would be unable to obtain gainful employment in Malaysia. It has also not been established that the applicant herself, a Malaysian national, would be unable to obtain employment in Malaysia that would satisfactorily support her spouse and children.

Finally, it has not been established that the applicant's children would be in danger if they were to reside in Malaysia, nor has it been established that they would be unable to go to an English-speaking school, thereby decreasing the likelihood of feeling isolated by other children for being American, a concern outlined by the applicant in her letter. 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)). As such, it has not been demonstrated that the applicant's family would experience exceptional hardship were they to accompany the applicant to Malaysia 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 Malaysia. 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,

...There is no way that I can be apart from my children for two years. It would be a manifest harm for [REDACTED] and [REDACTED] to be away from Mommy for so long. [REDACTED] would be responsible for working full time and taking care of our sons while also keeping the household going—this would be so hard for him. Whenever [REDACTED] goes out of town on business, which happens two or three times a year, he would have to hire babysitters to take care of the children...Being separated from my children is out of the question.

Travel between the United States and Malaysia is expensive and difficult with small children. Since our financial situation would be poor if we had to maintain two households, one here and one in Malaysia, it would be very rough for us to afford travel so the entire family could be together...

Supra at 2.

The record indicates that the applicant's spouse is employed full-time. While the applicant's spouse may need to make adjustments with respect to the family's situation while the applicant resides abroad for two years, it has not been shown that such adjustments would cause the applicant's spouse and/or children exceptional hardship. As referenced above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof.

Moreover, evidence from a mental health professional that describes the ramifications that the applicant's spouse and/or children would experience were they to be separated from the applicant for two years has not provided to substantiate exceptional hardship.

Finally, it has not been documented that the applicant would be unable to obtain gainful employment in Malaysia, thereby allowing her to assist the applicant's spouse with the household expenses. The applicant's spouse's and children's hardship, if they remained in the United States for two years without the applicant, does not go beyond that normally suffered upon the temporary separation of a mother/spouse from her husband 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. The AAO finds that the applicant has failed to establish that her spouse and children would suffer exceptional hardship were she to relocate to Malaysia while they remained in the United States and in the alternative, the AAO finds that the applicant has failed to establish that her spouse and children would suffer exceptional hardship if they moved to Malaysia 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 her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.