

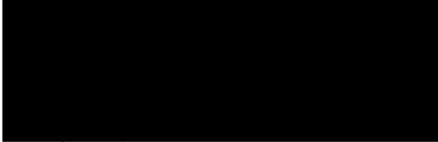
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U.S. Citizenship
and Immigration
Services

#13

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: MAR 08 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:



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 that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A motion to reopen was granted and the order dismissing the appeal was affirmed. The matter is now before the AAO on another motion to reopen. The motion will be granted and the previous decisions will be affirmed.

The record reflects that the applicant is a native and citizen of Poland 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 February 27, 2003. The applicant has a U.S. citizen spouse. The applicant presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to her spouse.

The director determined that the applicant failed to establish that a qualifying relative would experience exceptional hardship if she fulfilled her two-year foreign residence requirement in Poland, and the application was denied accordingly. *Director's Decision*, dated November 24, 2004.

On motion, counsel asserts that the sole basis of denial was that documentation from a qualified professional was not provided and this basis no longer exists, as documentation from a qualified professional demonstrating that the applicant's spouse would suffer exceptional hardship is being submitted. *Motion to Reopen*, dated October 10, 2006.

The record includes, but is not limited to, counsel's motion, a psychosocial assessment, financial records, informational materials on the Personality Assessment Inventory and the Beck Depression Inventory, and statements from the applicant and her spouse. 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(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 demonstrate that a qualifying relative would experience exceptional hardship upon relocation to Poland for two years. A social worker who interviewed and administered tests to the applicant's spouse states that he has difficulty concentrating, trouble falling asleep, and a general state of irritability. *Psychosocial Assessment*, at 2, undated. The social worker states that he would have great concern for the applicant's spouse's emotional state if he moved to Poland based on his depression and anxiety. *Id.* The social worker states that the applicant's spouse has a long history of depression, has taken anti-depressants in the past, and moved from a small town as the small town seemed to increase his depression due to long winters and lack of opportunities. *Id.* at 3. The social worker also asserts that if the applicant's spouse moved to an isolated city in Poland where he does not speak the language, has limited access to therapists, has few job opportunities and is subjected to brutal winters, it could cause deterioration to his mental health. *Id.* at 4. However, the record contains no evidence that the applicant's spouse has ever been diagnosed with depression prior to this assessment or that he has taken medication for depression. In addition, the value of the assessment is diminished as there is no evidence of an ongoing relationship between the social worker and the applicant's spouse. Moreover, the evaluation appears to be based largely on the self-reporting of the applicant's spouse.

Counsel states that the applicant's spouse has no family in Poland, the unemployment rate in the applicant's town is twenty percent, it could take a long time for the applicant's spouse to find employment, the labor standards are lower, he has student loans to pay off, and his career in management would be disrupted. *Counsel's First Motion to Reopen*, at 7, dated November 21, 2005. Based on her education, there is no evidence that the applicant could not obtain employment in Poland in order to avoid financial hardship to her spouse. In addition, there is no substantiating evidence of country conditions in Poland. The applicant's spouse states that he is close to his parents, has ascended quickly in his company, owes \$11,000 in school loans, did not finish college in part due to his mental health, and his mental health is affected by climate. *Applicant's Spouse's Statement*, at 2-4, dated September 9, 2004. The record does not include current evidence of the applicant's spouse's financial state which reflects that he would face financial hardship. The AAO notes that relocation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. The record reflects that the applicant's spouse would face difficulty upon relocation to Poland, but it does not rise to the level of exceptional hardship.

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. Counsel states that the applicant's spouse has no family in Utah, he will relapse into a depressed state, and he has suffered tremendously in the past when he lost those close to him. *Id.* at 8. The applicant's spouse states that he relies on the applicant for emotional support, he has suffered from clinical depression since 1996, he has taken medicine on and off, he prefers not take the medicine due to the side effects, the applicant's presence lessens the incidents of depression, and his depression would set in again. *Applicant's Spouse's Statement*, at 2. As mentioned, the record does not include substantiating evidence of the applicant's spouse's prior treatment or medication. The social worker states that the applicant's spouse is anxious about the applicant's immigration status, often sitting alone for long periods of time crying and expressing a sense of hopelessness. *Psychosocial Assessment*, at 3. The record includes several statements from the applicant and her spouse which detail their high degree of closeness to each other. While the AAO acknowledges that the applicant's spouse would suffer hardship if his wife were to return to Poland without him, it notes that separation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. Based on the record, the AAO finds that the applicant's spouse would not face exceptional hardship upon remaining in the United States during the two-year period.

ORDER: The motion is granted and the previous decisions are affirmed.