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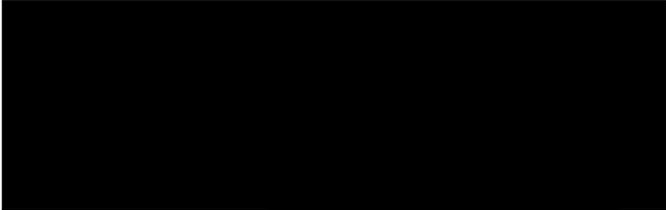
U.S. Department of Homeland Security
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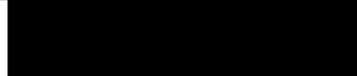
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: NOV 30 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.

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 Paraguay 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 August 16, 2001. The applicant's child is a U.S. citizen. The applicant presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to his child.

The director determined that the applicant had failed to establish his child would experience exceptional hardship if he fulfilled the two-year foreign residence requirement in Paraguay and the application was denied accordingly. *Director's Decision*, dated March 7, 2007.

On appeal, the applicant asserts that his government has granted him a no objection letter which has been sent to the Department of State. *Form I-290B*, received April 3, 2007.

The record includes, but is not limited to, a no objection letter from the Embassy of Paraguay, the applicant's statement and country conditions information on Paraguay. 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, Department of Homeland Security (DHS), "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.

The record includes a letter of no objection from the Embassy of Paraguay which is addressed to the Department of State. However, there is no evidence that the Director has favorably recommended a waiver based on the no objection letter.

The record includes documentation related to a claim of exceptional hardship, therefore, the AAO will review the applicant's claim of exceptional hardship.

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. (Quotations and citations omitted).

In [REDACTED] (D.D.C. 1982), the U.S. District Court, District of Columbia stated that:

Courts deciding [REDACTED] 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 suffer exceptional hardship upon relocation to Paraguay for two years. The applicant states that taking his daughter to Paraguay will put her in harm's way, Paraguay has attracted international crime syndicates and terrorist organizations, it is a strategic South American hub for international drug trafficking and other crimes, and U.S. citizens may be targeted by extremist groups. *Applicant's Statement*, at 1-2, undated. The AAO notes although the Department of State indicates that U.S. citizens anywhere overseas may be targeted by extremist groups, the U.S. Embassy is not aware of any specific threats to Americans in Paraguay. *U.S. Department of State Consular Information Sheet, Paraguay*, at 1, dated January 4, 2007. There is no other evidence of hardship to the applicant's child in the record. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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)). The record does not demonstrate that exceptional hardship will be imposed on the applicant's child upon relocation to Paraguay for two years.

The second step required to obtain a waiver is to demonstrate that the applicant's child would suffer exceptional hardship if she remained in the United States during the two-year period. The applicant states that his prolonged absence could disturb his child's development and cause serious psychological damage, he is the main provider for his child and he does not have any relatives who would be able to take care of his child. *Applicant's Statement*, at 1. The AAO notes that the applicant's spouse's legal status is not clear from the record; therefore, it is not clear whether the five-year old child would be left in the United States without her parents. In addition, the other claims of hardship are not substantiated in the record. As such, the record does not demonstrate that exceptional hardship will be imposed on the applicant's child if she remained in the United States.

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.