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

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 03 2008

IN RE: [Redacted]

APPLICATION: Application for Waiver 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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Venezuela. The record establishes that she was admitted to the United States in J-1 nonimmigrant status in June 2001 and 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), based on the exchange visitor skills list. The applicant presently seeks a waiver of her two-year foreign residence requirement, based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to Venezuela temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled her foreign residence requirement in Venezuela.

The director determined that the applicant failed to establish that her spouse would experience exceptional hardship if the applicant fulfilled her foreign residence requirement in Venezuela. *Director's Decision*, dated August 27, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated November 8, 2007; a letter from the applicant's spouse, a U.S. citizen, dated November 7, 2007; financial information with respect to the applicant and her spouse; a letter from the applicant's spouse's physician, dated November 8, 2007; a statement from the applicant's spouse's mother, a U.S. citizen, dated November 7, 2007; and a letter from the applicant's spouse's mother's physician's surgery scheduler, dated November 9, 2007. The entire record was reviewed and considered in rendering this decision.

Section 212(e) of the Act states in pertinent part that:

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(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.

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).

To begin, the record contains references to the hardship that the applicant’s spouse’s mother, a U.S. citizen, would suffer were the applicant’s waiver request denied. Section 212(e) of the Act provides that a waiver is applicable solely where the applicant establishes exceptional hardship to his or her citizen or lawfully resident spouse or child. In the present case, the applicant’s spouse is the only qualifying relative, and hardship to the applicant or her mother-in-law cannot be considered, except as it may affect the applicant’s spouse.

The first step required to obtain a waiver is to establish that the applicant’s spouse would experience exceptional hardship if he resided in Venezuela with the applicant while she fulfilled her foreign residence requirement. To support this contention, the applicant’s spouse states the following:

...Venezuela...is a country that is experiencing very tumultuous times. In recent days, bursts of violence have broken up in the middle of political-driven marches around the country, many people have been injured by gunshots.... The violence broke out after anti-Chavez demonstrators—led by university students—marched peacefully to the Supreme Court to protest constitutional changes that Venezuelans will consider in a December referendum....

...Residing in Venezuela however, would lead to another set of problems. Venezuela is a Spanish speaking country and English is not used at all by their inhabitants. I do not speak Spanish, and as a result residing in Venezuela would make getting a job very difficult, since most likely there are very few job positions that would require an English speaking employee who could not communicate with the rest of the people. This, of course, would cause our staying in Venezuela very arduous since I would not have money to support my household and her securing a job is not certain due to the situation that Venezuela faces right now....

...I would suffer immensely in being separated from my mother. She is a widow and relies on me for basic tasks since she is in need of two knee replacements at this moment.... Walking is a very painful task for her and she needs constant company and help in order to accomplish mundane errands, like grocery shopping and cleaning. My absence from her would cause extreme hardship for her since she would have to hire help for these tasks as well as mental anguish since we have lived near other since my birth. Being away from my mother would be very painful and distressful both for her and me....

...if I were to live in Venezuela, as mentioned before this country is at political and social unrest....

I also have a serious skin condition, known as follicular mucinosis...this condition has proven to worsen with stress and the mental anguish...would no doubt

deteriorate this illness. Medical reports have suggested that individuals with follicular mucinosis may be at higher risk for the development of lymphoma.... I am currently covered with health insurance which allows me to have check-ups of this rare illness, in the case of my departure with my wife to Venezuela I would not be able to experience the same health care or even afford it.....

Declaration of [REDACTED] *dated November 7, 2007.*

The Department of State, in its Consular Information Sheet for Venezuela, states, in pertinent part, the following:

Venezuela is a medium income country with a substantial oil industry. The political situation in Venezuela is highly polarized and volatile. Violent crime is a continuing problem. Assaults, robberies and kidnappings occur throughout the country.....

Violent crime in Venezuela is pervasive, both in the capital, Caracas, and in the interior. The country has one of the highest per-capita murder rates in the world. Armed robberies take place in broad daylight throughout the city, including areas generally presumed safe and frequented by tourists. A common technique is to choke the victim into unconsciousness and then rob them of all they are carrying. Well-armed criminal gangs operate with impunity, often setting up fake police checkpoints. Kidnapping is a particularly serious problem, with more than 1,000 reported during the past year alone. According to press reports at least 45 foreigners have been kidnapped in the first eight months of 2007. Investigation of all crime is haphazard and ineffective. In the case of high-profile killings, the authorities quickly round up suspects, but rarely produce evidence linking these individuals to the crime. Only a very small percentage of criminals are tried and convicted.

Maiquetía Airport, the international airport serving Caracas, is dangerous and corruption is rampant. Concerns include personal property theft, mugging, and "express kidnapping" in which individuals are taken to make purchases or to withdraw as much money as possible from ATMs, often at gunpoint. The Embassy has received multiple, credible reports that individuals with what appear to be official uniforms or other credentials are involved in facilitating or perpetrating these crimes. For this reason, American citizen travelers should be wary of all strangers, even those in official uniform or carrying official identification. There are also known drug trafficking groups working from the airport. Travelers should not accept packages from any persons and should keep their luggage with them at all times.

Because of the frequency of robberies at gunpoint, travelers are encouraged to arrive during daylight hours if at all possible. If not, travelers should use extra care both within and outside of the airport. The Embassy strongly advises that all arriving passengers make advance plans for transportation from the airport to their place of lodging. If possible, travelers should arrange to be picked up at the airport by someone who is known to them. The Embassy has received frequent reports recently of armed robberies in taxicabs going to and from the airport at Maiquetía. There is no foolproof method of knowing whether a taxi driver at the airport is reliable. The fact that a taxi driver presents a credential or drives an automobile with official taxi license plates marked "libre" is no longer an indication of reliability. Incidents of taxi drivers in Caracas overcharging, robbing, and injuring passengers are common. Travelers should take care to use radio-dispatched taxis or those from reputable hotels. Travelers should call a 24-hour radio-dispatched taxi service from a public phone lobby or ask hotel, restaurant, or airline representatives to contact a licensed cab company for them....

Harassment of U.S. citizens by pro-government groups, Venezuelan airport authorities, and some segments of the police occurs but is quite limited. Venezuela's most senior leaders, including President Chavez, regularly express anti-American sentiment. The Venezuelan government's rhetoric against the U.S. government, as well as American culture and institutions, is slowly affecting attitudes in what used to be one of the most pro-American countries in the hemisphere....

U.S. Department of State, Consular Information Sheet for Venezuela, dated November 1, 2007.

Based on the problematic country conditions in Venezuela, the concerns outlined above regarding the applicant's spouse's unfamiliarity with the culture and language in Venezuela, and his mother's dependence on him due to her serious medical ailment and his stated distress were he to be unable to help her due to his prolonged relocation abroad, the AAO concurs with the director that the applicant's U.S. citizen spouse would experience exceptional hardship were he to accompany the applicant to Venezuela for the requisite period.

The second step required to obtain a waiver is to establish that the applicant's spouse would suffer exceptional hardship if he remained in the United States during the requisite period that the applicant resides in Venezuela. As stated by the applicant's spouse,

...I own an [sic] small roofing business in Martinez, CA...and my wife is in charge of main operations of the company. My wife takes care of the billing, estimates and contract operations, in addition to sub-contractors payments and client care, which I could not accomplish by myself. In the case of her absence, in order to continue my business I would have to hire an employee to manage all these tasks and my business does not produce enough income to allow this.... My financial

situation has been deteriorating in the last year....in the event of my wife's absence I would be forced to sustain two households, which is not a possibility due to my income plus, incur in extra expenses (for example, a secretary) in order to be able to continue my business....

In her absence, I would suffer extreme mental anguish since she would have to live in Venezuela which, is a country that is experiencing very tumultuous times....

Supra at 1-3.

Counsel has not provided any documentation from a mental health professional that describes the ramifications that the applicant's spouse would experience were he to be separated from the applicant for the requisite period. In addition, it has not been established that the applicant is unable to obtain gainful employment in Venezuela, thereby assisting with the maintenance of the U.S. household. Moreover, no documentation has been provided regarding country conditions in Venezuela, to confirm that the applicant, a native and citizen of Venezuela, would be in danger, thereby causing the applicant's spouse exceptional hardship. 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)).

Finally, as the applicant's spouse states in his declaration, his business has been deteriorating due to the sagging housing market; it has thus not been established that the applicant's spouse would be unable to assume the applicant's current responsibilities, thereby ensuring the business continues to be viable during the applicant's temporary absence. While the applicant's spouse may need to make adjustments with respect to the family's financial situation, the continuing viability of his business and the care of his mother while the applicant resides abroad to fulfill her foreign residence requirement, it has not been shown that such adjustments would cause the applicant's spouse exceptional hardship.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face exceptional hardship if the applicant's waiver request is denied. Although the applicant has established that her spouse would suffer exceptional hardship if he moved to Venezuela with the applicant for the requisite period, counsel has not established that the applicant's spouse would suffer exceptional hardship were he to remain in the United States while the applicant relocates to Venezuela for the requisite period. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse temporarily relocates abroad based on a foreign residence requirement.

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.