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

PUBLIC COPY

763

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

APR 03 2008

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:

[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.

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 native and citizen of Nicaragua who obtained J-1 nonimmigrant exchange status on August 13, 1999 to participate in a program funded by the United States Agency for International Development. She is thus 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 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 Nicaragua temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Nicaragua.

The director determined that the applicant failed to establish that her spouse would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Nicaragua. *Director's Decision*, dated September 4, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated September 18, 2007 and a letter of no objection from the Consulate General of Nicaragua, dated September 17, 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 at 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 record contains references to the hardship that the applicant's spouse's grandmother and daughter 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, her spouse's grandmother, or her spouse's daughter 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 Nicaragua for two years with the applicant. To support this contention, the applicant states the following:

...My husband was born and raised in the USA and it would be extremely difficult for him to go to Nicaragua and start all over again in a strange country. My husband would be forced to take any job available in Nicaragua, and our family would all suffer the consequences of leaving the United States.... As United States citizens he has the right of access to all the opportunities this country has to offer him, but in Nicaragua he would be considered an outsider. He also does not know the country of Nicaragua and it would be extremely difficult for him to adapt to the customs and norms of Nicaragua since [redacted] [the applicant's spouse] has lived in the US his entire life....

[redacted] also has a U.S. citizen daughter that is 2 years old and lives with us on the weekends. If [redacted] were to leave the U.S. to go with me to Nicaragua, he would then be forced to not see his daughter... [redacted] takes care of his grandmother, as well. He is very close to her and she is not doing well.... If he is no longer able to care for his grandmother then her condition will definitely worsen to the point where she would die because she cannot take care of herself....

My husband would suffer extremely if he has to go with us to Nicaragua because he would not have access to the great range of job opportunities available to him in the United States. Furthermore, finding a job in Nicaragua will not be easy due to the very limited job opportunities available....

...It is not only that my husband's grandmother has a very serious medical condition, but also there is a real threat and danger to my husband's well being because of the unstable political and economic climate in Nicaragua....

Statement from [redacted], dated May 25, 2007.

With respect to the applicant's spouse's grandmother's medical condition, a letter has been provided by her physician, stating that the applicant's spouse should "...remain close to his grandmother so he can assist us in her medical care, which is very delicate at this moment..." *Letter from [redacted] M.D., Naples Cardiovascular Specialists, dated April 24, 2007.* The letter does not describe in detail exactly what type of assistance the applicant's spouse's grandmother needs from her grandson. Moreover, it has not been documented that were the applicant's spouse to depart the United States for two years, his grandmother's condition would deteriorate to such a point that the applicant's spouse would experience exceptional hardship.

Finally, it has not been established that any alternate arrangements for his grandmother's care would cause exceptional hardship to the applicant's spouse. 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)).

In addition, no documentation has been provided regarding the economic situation in Nicaragua, to substantiate the claims made by the applicant that her spouse will suffer exceptional financial hardship were he to reside in Nicaragua. Furthermore, although the record indicates that he cares for his daughter on weekends, counsel has not established that a separation from his daughter for a two-year period would cause the applicant's spouse exceptional hardship. Counsel has also failed to establish that the applicant's spouse would be unable to return to the United States on a regular basis to visit with his daughter and grandmother. Finally, the applicant references the problematic country conditions in Nicaragua, but does not substantiate the claims with any corroborating documentation, to evidence the hardship her spouse would encounter in Nicaragua. Thus, despite the director's conclusion to the contrary, the AAO finds that the applicant has not established that her spouse would encounter exceptional hardship were he to temporarily relocate to Nicaragua based on his spouse's two-year foreign residency requirement.

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 two-year period that the applicant resides in Nicaragua. As stated by the applicant,

.. [the applicant's spouse] takes care of his grandmother, as well. He is very close to her and she is not doing well. I assist him in taking care of her needs and monitoring her condition. If I am not around to help [REDACTED] with his grandmother then he will not be able to meet the family's physical and emotional needs, while still providing financially as well. If he is no longer able to care for his grandmother then her condition will definitely worsen to the point where she would die because she cannot take care of herself....

...I cannot leave the country and leave my husband all alone. We both would be like widowers, if I were to go back. He would have to work long hours. He will not be able to see his child because he would be forced to work. Either way the money would not be enough to properly provide for the child and provide for his grandmother....

Supra at 2-3.

Counsel for the applicant further states,

...If the respondent were forced to return to Nicaragua, her husband and his grandmother may be forced to rely on the United States government for medical emergencies and routine medical examinations as well as food and maybe even shelter. Moreover, [REDACTED]s [the applicant's spouse's grandmother's] health would deteriorate without the assistance of Mrs. [REDACTED] [the applicant] and

[REDACTED] [the applicant's spouse] to the point where she would likely die from her medical conditions. This in turn would prove devastating to [REDACTED] as he is extremely close to his grandmother and would cause him to sink into a depression. He would not be able to work or take care of his grandmother. This would also prove detrimental to the grandmother, who would now find [REDACTED] devastated with depression and without the only mother he knows....

Brief in Support of Appeal, dated September 18, 2007.

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, and without her support with respect to his grandmother's and daughter's care, for two years. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, no current financial documentation has been provided to establish the applicant's and her spouse's grandmother's current economic situation, to corroborate that the applicant's spouse will suffer exceptional financial hardship with respect to his and his grandmother's care, due to the applicant's two-year relocation abroad. Nor has it been established that the applicant is unable to obtain gainful employment in Nicaragua, thereby assisting with the maintenance of the U.S. household. While the applicant's spouse may need to make adjustments with respect to the family's financial situation and the care of his grandmother and child while the applicant resides abroad due to 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. The applicant has failed to establish that her spouse would suffer exceptional hardship if he moved to Nicaragua with the applicant for the requisite two-year period, and in the alternative, the applicant has failed to establish that her spouse would suffer exceptional hardship were she to relocate to Nicaragua while he remained in the United States. 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.