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U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

**AUG 12 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Center Director, Vermont 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 China. The record establishes that he was admitted to the United States in J-1 nonimmigrant status in January 1996. He 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 his two-year foreign residence requirement, based on the claim that his U.S. citizen spouse and child, born in June 2007, would suffer exceptional hardship if they moved to China temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled his two-year foreign residence requirement in China.

The center director determined that the applicant failed to establish that his U.S. citizen spouse and/or child would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in China. *Center Director's Decision*, dated December 5, 2007. The application was denied accordingly.

In support of the appeal, counsel provides a brief, dated January 29, 2008 and referenced exhibits. 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(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 U.S. citizen spouse and/or child would experience exceptional hardship if they resided in China for two years with the applicant. To support this contention, the applicant's spouse states the following:

...I never want to be separated from him [the applicant]. He is part of my life. I don't want anybody to take that part of my life; I do not want my life to have this big change.... I love America. I love its freedom of human rights, freedom of speech, freedom of religion I love its political system, health insurance, hospitalization, etc. I love my family here. I love my friends here; I love the people here. I will never give up my nationality in America....

My husband has diabetes....

The medical systems of China and America are not comparable.... America has perfect medical treatment for diabetes, and I don't think China or any other countries can compare....

*Statement from* [REDACTED] *dated July 9, 2007.*

To begin, no objective documentation from a licensed medical professional has been provided that explains in detail the applicant's current medical condition, the gravity of the situation, its short and long-term treatment plan and what specific hardships he will face were he to reside in China in terms of the health care provided there, and what impact said hardships would have on the applicant's spouse and/or son. The AAO notes that the applicant did provide copies of medical records; however, they do not detail, in layman's terms, the applicant's current medical situation and what impact said medical situation will have on the applicant's spouse were she to relocate to China with the applicant.

Moreover, the applicant makes numerous references to his wife's medical conditions; however, no letter from a licensed medical professional is provided to further detail the medical conditions. Nor does the applicant's spouse detail these medical conditions in her statement and/or outline what medical hardships she herself will suffer were she to relocate to China. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Saffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, counsel notes that the applicant's family will suffer financial hardship were they to relocate to China because "...the applicant's skills are that of a real estate agent, a career that does not even require a college education in the U.S. As the job requires little education, the Applicant's skills are unlikely to be in high demand in China if he is removed...." *Brief in Support of Appeal*, dated January 29, 2008. No documentation has been provided that substantiates counsel's claim that the applicant and/or his spouse, a native of China, would be unable to obtain gainful employment in China. 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 Obaighena*, 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). The AAO thus concludes that the applicant has failed to establish that his U.S. citizen spouse and/or child will experience exceptional hardship were they to relocate to China for a two-year period.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse and/or child would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in China. As asserted by counsel,

...The Applicant is a young man, and yet suffers from diabetes, a condition that nearly caused his death. It is not usual for a man Applicant's age to suffer from diabetes, and to nearly die from the condition. Applicant's survival resulted from the high standard of medical care he received as he resides in the U.S. and has health insurance. Were Applicant removed to China and to suffer another severe attack of diabetes, he may not survive due to the lower standard of medical care, in China, as well as the likelihood that he could not afford medical insurance there....

...The Service may not simply dismiss any medical condition suffered by an Applicant where that condition could have a profound impact on the degree of hardship to the qualifying relative as in the instant case. The Applicant's death would cause exceptional hardship to his spouse who would be required to support herself and her infant alone. As her income is low, she would not be able to afford adequate child care. Further, Applicant's child would have no father.

Also, Applicant's child is only about seven months old. Therefore, he is in the process of forming intimate bonds with his parents, and could suffer from separation anxiety that could affect his psychological development and have lasting consequences on him....

*Id.* at 2-3.

To begin, counsel has not provided any documentation from a mental health professional that describes the ramifications that the applicant's spouse and/or child would experience were they to be separated from the applicant for two years. Moreover, no documentation has been provided that establishes that the applicant's spouse, a native of China, and/or child would be unable to travel to China on a regular basis to visit with the applicant.

Furthermore, no financial documentation has been provided to corroborate the statements made by counsel that the applicant's spouse and/or child would experience exceptional financial hardship were the applicant to reside abroad for two years. While the applicant's spouse may need to make adjustments with respect to the maintenance of the household and the care of her child while the applicant resides abroad for two years,

it has not been shown that such adjustments would cause the applicant's spouse and/or child exceptional hardship.

In addition, it has not been established that the applicant would be unable to obtain gainful employment in China, thereby assisting his wife and child with respect to the U.S. household expenses. Nor has it been established that the applicant's spouse, a college graduate with two majors, is unable to obtain employment with a higher income, thereby assisting herself and her child to a greater extent while her spouse resides abroad. Finally, the record indicates that the applicant's spouse's family members, including her mother, her sister, her sister's children, and her brother, reside in the United States. *See Statement from [REDACTED]* at 1. It has not been established that they would be unable to assist the applicant's spouse and/or child should the need arise, whether it be emotionally, physically and or financially. The applicant's spouse's and child'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 father/spouse from his wife and child.

The AAO finds that the applicant has failed to establish that his U.S. citizen spouse and/or child would suffer exceptional hardship if they relocated to China with the applicant for the requisite two-year period and in the alternative, were they to remain in the United States while the applicant returned to China for a two-year period. As such, the record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen spouse and/or child will face exceptional hardship if the applicant's waiver request is denied.

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. The waiver application is denied.