

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H3

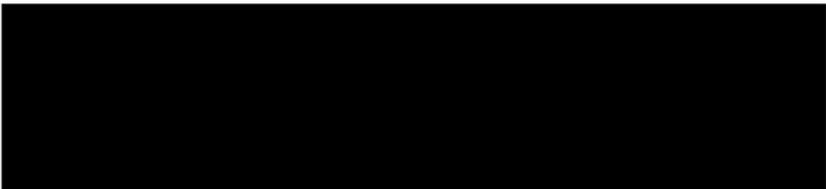


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 29 2008

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink that reads "John F. Grissom".

John F. Grissom, Acting 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 Uzbekistan who was admitted to the United States in J1 nonimmigrant exchange status on August 24, 2002 to participate in a program funded by the U.S. Department of Agriculture. He 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) based on government financing. The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen spouse would suffer exceptional hardship if she moved to Uzbekistan temporarily with the applicant and in the alternative, if she remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Uzbekistan.

The director determined that the applicant failed to establish that his U.S. citizen spouse would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Uzbekistan. *Director's Decision*, dated July 10, 2008. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a Form I-290B, Notice of Appeal or Motion (Form I-290B), and a corresponding attachment. 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 (ii), 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).

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 U.S. citizen spouse is the only qualifying relative. The AAO notes that numerous references are made by counsel and the applicant regarding the hardships the applicant's spouse's mother and grandmother will suffer if the applicant's waiver request is not granted. 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)). It has thus not been established that the applicant's spouse's mother's and/or grandmother's hardship, were the applicant to relocate abroad for a two-year period, would cause the applicant's spouse exceptional hardship.

The first step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would experience exceptional hardship if she resided in Uzbekistan for two years with the applicant. To support this contention, the applicant's spouse states the following:

My wife is afraid to live in Uzbekistan because of religious and political reasons. She has read the papers, and listened to news broadcasting of how much the United States is disfavored in Uzbekistan. As a matter of fact, there are many anti-American groups in existence in Uzbekistan. Also, Uzbekistan is a predominantly Muslim country. My wife is a Catholic.

Furthermore, my wives' mother and grandmother and [sic] very, very ill. Her mother is a diabetic and legally blind. Her grandmother has the last stage of Alzheimer's and my wife and I support take care of both of them.

My wife has Asthma, she takes Albuterol for the Asthma. This medication costs \$50.00 per month in Uzbekistan. The average salary is \$35.00-40 per month....

Letter from [REDACTED] dated December 13, 2007.

The AAO notes that the U.S. Department of State has issued a travel warning for Uzbekistan. As stated, in pertinent part:

This Travel Warning is being issued to remind U.S. citizens that the potential for a terrorist attack or localized civil disturbance still exists, despite the fact that there have been no violent incidents in Uzbekistan since May 2005. The Department of State continues to urge Americans in Uzbekistan to exercise caution when traveling in the region. This supersedes the Travel Warning dated October 25, 2007.

The U.S. Government continues to receive information that indicates terrorist groups may be planning attacks, possibly against U.S. interests, in Uzbekistan. Supporters of terrorist groups such as the Islamic Movement of Uzbekistan, Al-Qaida, the Islamic Jihad Union, and the Eastern Turkistan Islamic Movement are active in the region. Members of these groups have expressed anti-U.S. sentiments and have attacked U.S. Government interests in the past, including the U.S. Embassy in Tashkent, and may attempt to target U.S. Government or private American interests in Uzbekistan. In the past, these groups have conducted kidnappings, assassinations, and suicide bombings, though no instances have been documented in recent years.

High security at official U.S. facilities may lead terrorists and their sympathizers to seek softer targets. These may include facilities where Americans and other foreigners congregate or visit, such as residential areas, clubs, restaurants, places of worship, schools, hotels, outdoor recreation events, and resorts. The U.S. Embassy in Tashkent continues to employ heightened security precautions. U.S. citizens should report any unusual activity to local authorities and then inform the Embassy.

Uzbekistan experienced a wave of terrorist violence in 2004. In July 2004 there were three suicide bombings in Tashkent, including one outside the U.S. Embassy. The Islamic Jihad Union (IJU) claimed responsibility for the attacks. The IJU also used suicide bombers in multiple attacks focused on police and Uzbek private and commercial facilities in Tashkent and Bukhara in late March and early April 2004. In May 2005, armed militants stormed a prison in Andijon, released its prisoners, and then took control of the regional administration and other government buildings in Andijon Province. Fighting broke out between government forces and the militants, and reports indicated that several hundred civilians died in the ensuing violence. While there were no reports of U.S. citizens affected by these events, U.S. citizens and other foreigners in Uzbekistan have experienced harassment from authorities since the 2005 violence.

Moreover, numerous statements made by the applicant are corroborated in the *Country-Specific Information-Uzbekistan*, released by the U.S. Department of State. As stated, in pertinent part:

Uzbekistan gained independence from the Soviet Union in 1991. While the country has undergone significant change since then, its progress towards democratic and economic reform has been halting and uneven. Corruption is endemic at all levels of society. Much of the country, particularly areas outside of Tashkent and the major tourist destinations of Samarkand, Bukhara and Khiva, is remote and difficult to access. Tourist facilities in these areas are typically below Western standards, and many goods and services remain difficult to find on a regular basis.

A Travel Warning remains in effect for Uzbekistan, and other parts of Central Asia. The Department of State reminds U.S. citizens of the potential for terrorist attacks or localized civil disturbances in Uzbekistan. Although there have been no violent incidents there since May 2005, Americans visiting or living in Uzbekistan are urged to exercise caution. The U.S. Government continues to receive information that indicates terrorist groups may be *planning attacks*, possibly against U.S. interests, in Uzbekistan. Supporters of terrorist groups such as the Islamic Movement of Uzbekistan, al-Qaida, the Islamic Jihad Union, and the Eastern Turkistan Islamic Movement are active in the region. Members of these groups have expressed anti-U.S. sentiments and have attacked U.S. Government interests in the past, including the U.S. Embassy in Tashkent, and may attempt to target U.S. Government or private American interests in Uzbekistan. In the past, these groups have conducted kidnappings, assassinations, and suicide bombings.

Increased security at official U.S. facilities over the past year may lead terrorists and their sympathizers to seek softer targets. These may include facilities where Americans and other foreigners congregate or visit, such as residential areas, clubs, restaurants, places of worship, schools, hotels, outdoor recreation events, and resorts. The U.S. Embassy in Tashkent continues to employ heightened security precautions. U.S. citizens should report any unusual activity to local authorities and then inform the Embassy.

Medical care in Uzbekistan is below Western standards, with severe shortages of basic medical supplies, including disposable needles, anesthetics, and antibiotics. A large percentage of medication sold in local pharmacies is known to be counterfeit. Elderly travelers and those with pre-existing health problems may be at particular risk due to inadequate

medical facilities. Most resident Americans travel to North America or Western Europe for their medical needs. Travelers are advised to drink only boiled water, peel all fruits and vegetables, and avoid undercooked meat. Due to inadequate sanitation conditions, travelers should avoid eating unpasteurized dairy products and most food sold in the streets.

Country Specific Information-Uzbekistan, U.S. Department of State, dated June 30, 2008.

Based on the problematic political, social and economic conditions in Uzbekistan and the warning issued to U.S. citizens by the U.S. Department of State with respect to travel to Uzbekistan, the AAO concludes that the applicant's U.S. citizen spouse would encounter hardship that would go significantly beyond that normally suffered upon the temporary relocation based on a spouse's two-year foreign residency requirement.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would suffer exceptional hardship if she remained in the United States during the two-year period that the applicant resides in Uzbekistan. The only reference to this criteria is made by counsel. As counsel states,

My client's [the applicant's] mother-in-law and grandmother in law are very, very ill. The mother-in-law is a diabetic and legally blind. The grandmother has the last stage of Alzheimer's' and my client and his wife have to support them financially and more importantly take care of them 24 hours a day....

The above two people need constant care that is provided to them 24 hours a day. It is more than likely that if my client or his spouse depart from the United States, that either or both of these individual will die....

Attachment to Form I-290B, dated August 11, 2008.

No documentary evidence has been provided with respect to the applicant's spouse's family members' health, their daily needs, and their finances, to establish the hardships the applicant's spouse would face in relation to her mother and grandmother were the applicant to temporarily relocate abroad. Nor has documentation been provided to establish any other specific hardships the applicant's spouse would face were she to remain in the United States while the applicant relocates abroad for two years. In fact, the AAO notes that the applicant's spouse has not provided a detailed statement outlining the hardships she would face were the applicant not present in the United States for a two-year period. 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). As such, it has not been

established that the applicant's U.S. citizen spouse will suffer exceptional hardship were she to remain in the United States while the applicant relocates abroad for a two-year period.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen spouse will face exceptional hardship if the applicant's waiver request is denied. Although the AAO finds that the applicant would suffer exceptional hardship if she moved to Uzbekistan with the applicant for the requisite two-year period, the applicant has failed to establish that his U.S. citizen spouse would suffer exceptional hardship were he to relocate to Uzbekistan while 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. The waiver application will be denied.