

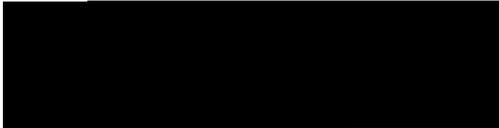
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **DEC 30 2008**

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.

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Center Director, Vermont Service Center. The applicant timely appealed the decision. On April 14, 2008, the Center Director, Vermont Service Center, dismissed the motion to reopen or reconsider.¹ The matter will be reopened, the April 14, 2008 decision referenced will be withdrawn, and the instant appeal will be dismissed.

The record reflects that the applicant is a native and citizen of France who was admitted to the United States in J-1 nonimmigrant exchange status in August 2003. 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 government financing. The applicant presently seeks a waiver of his two-year residence requirement, based on the claim that his U.S. citizen spouse and child, born in March 2006, would suffer exceptional hardship if they moved to France 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 France.

The acting 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 France. *Acting Center Director's Decision*, dated December 9, 2006. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated February 9, 2007 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

¹ The AAO notes that on April 14, 2008, the Center Director, Vermont Service Center denied the applicant's motion to reopen or reconsider, filed by the applicant on February 13, 2007 with respect to the USCIS decision dated October 7, 2005. *See Decision of the Center Director*, dated April 14, 2008. The AAO finds that this decision appears to have been issued in error, as the dates provided in said letter do not correspond to the applicant's case, nor did counsel ever reference a motion when the instant appeal was submitted. As such, the AAO hereby withdraws the April 14, 2008 decision and will proceed with the instant appeal accordingly.

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.

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 and child are the only qualifying relatives, and hardship to the

applicant and/or his mother-in-law cannot be considered, except as it may affect the applicant's U.S. citizen spouse and/or child.

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 France for two years with the applicant. To support this contention, the applicant's spouse states the following:

I have progressed from the position of Associate to that of Manager at WWB [Women's World Banking] (with strong prospects of promotion to Director in the near future) where I lead a team that helps to channel private sector capital to non-profit microfinance institutions worldwide.

Microfinance consists of assisting in providing loans and other financial services to women microentrepreneurs in developing countries as a means of allowing them to climb their way out of poverty.

New York City is the world 'hub' of funding for microfinance operations.... To date, French banks have not been very active in microfinancing.

Therefore, I would not be able to continue in the field of endeavor that I trained for at Johns Hopkins School of Advanced International Studies and for which I have invested the last 10 years of my professional career, 6 of them at WWB.

Since I am also not fluent in French, this would only increase the likelihood that I would not be able to find satisfactory employment in France....

If [redacted] [the applicant] is forced to leave the United States and I went with him, it will be impossible for me to continue to work as I do now....

My mother, [redacted] is 73 years old and not in the best of health....

[If [redacted] were forced to return to France, the emotional hardship I would suffer from being separated from my mother would be severe and extreme, especially since she is a widow and lives alone.

In addition, my mother would also suffer emotional hardship due to separation from her grandson and me.

Affidavit of [redacted] dated February 9, 2007.

To support the applicant's spouse's statements regarding career disruption were she to relocate to France, a letter has been provided by [redacted], Manager, Human Resources, Women's World Banking. As [redacted] asserts,

[redacted] [the applicant's spouse] has been employed by Women's World Banking, ad [sic] Dutch non-profit headquarter in New York City, since March 2000. [redacted] has been a critical player to the Womens World Banking (WWB) team and helped develop its Financial Products and Services Department (FPS), so that today it is recognized as one of the leading capital markets teams amongst a wide group of microfinance network organizations globally....

While here at WWB, [redacted] has consistently progressed her career, from Associate, to Coordinator, and then to Manager of the FPS Department in May 2005. With her continual leadership and strong performance, there is a strong possibility that she could become a Director at WWB. WWB's New York location is critical to the work of Mrs. [redacted]'s team, as the vast majority of socially minded private sector investors and the microfinance teams of the leading global banks that have entered this sector are based here in New York, where she has developed

strong working relationships with several of their managers. New York is the hub of mainstream banks' microfinance operations.

In closing, please note that WWB is a non-profit (not a bank) and has only one office, based here in New York.... As such, all employment with WWB and all services provided are managed from New York. Please also note that [REDACTED]'s current salary is \$103,222....

Letter from [REDACTED], Manager, Human Resources, Women's World Banking, dated February 2, 2007.

The record indicates that the applicant's U.S. citizen spouse is integrated into the U.S lifestyle and is gainfully employed in the area of funding for microfinance operations, with a strong likelihood of continued upward mobility with respect to her career. Moreover, she is not fluent in the French language and France has not taken an active role in the microfinance sector. *See Letter from [REDACTED] General Manager, Deutsche Bank Microfinance Funds, dated February 7, 2007.* The Board of Immigration Appeals (BIA) found that a U.S. citizen spouse who was in pursuit of an advanced degree with great promise in his chosen field would encounter exceptional hardship with respect to his career if he were to either interrupt his education or attempt to continue his studies abroad, if his spouse's waiver request was not granted. *Matter of Hersh*, 11 I&N Dec. 142, Interim Decision (BIA 1965). The AAO finds *Matter of Hersh* to be persuasive in this case due to the similar fact pattern. Were the applicant's waiver request denied, his U.S. citizen spouse would have to cease the pursuit of continued advancement with respect to her professional career, as documented above, and would likely be unemployed in France due to her lack of fluency in French. Such a disruption at this stage of her career would be significant as to constitute exceptional hardship. The AAO thus finds that the hardship the applicant's U.S. citizen spouse would encounter were she to relocate to France for a two-year period goes significantly beyond that normally suffered upon the temporary relocation of families based on a two-year home residency requirement.

As for the applicant's U.S. citizen child, counsel has failed to elaborate on what specific hardships said child would face were he to relocate to France for a two-year period with the applicant. While general references are made to the high unemployment rate in France, the information provided is general in nature and does not establish that the applicant's child will suffer exceptional financial hardship were he to reside in France. Even if the applicant is unable to obtain gainful employment in France, it has not been established that the applicant's spouse, gainfully employed in the United States, would be unable to assist in their child's daily care while he lives in France. Finally, it has not been established that the applicant's spouse would be unable to travel to France regularly to visit her spouse and child. 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)).

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 she remained in the United States during the two-year period that the applicant resides in France. As stated by the applicant's spouse:

[I]f my husband [the applicant] is forced to return to France, I would experience extreme hardship in my career with WWB. In my position as Manager with WWB, I travel internationally on a monthly basis to Africa, Asia, Latin American and the Middle East.

I also work long hours at WWB in New York. My work day is usually from 7AM to 8PM. Our son, [REDACTED], who is 10 months old, attends a childcare center from 7:30AM to 6:00PM Monday through Friday. My husband usually picks up our son in the evening. He also takes care of him on weekend when I am out of the country.

The hardship to [REDACTED] if he were separated from his father would also be extremely detrimental to his growth and development...

development would be adversely effected, in addition to the exceptional emotional and psychological hardship I would suffer.

The anxiety and depression that I would suffer if [REDACTED] [the applicant] was forced to leave the United States would also adversely impact on the emotional development of [REDACTED]

In addition, to the above, it should also be pointed out that [REDACTED] would not be able to continue his career in France, placing additional financial hardship on me....

[REDACTED] Master of Social Work degree would not be recognized in France. If [REDACTED] wished to work the same capacity in France as he does in the United States, he would need to attend school for three more years....

Supra at 1-3

In regards to the emotional hardship referenced by the applicant's U.S. citizen spouse, although a letter was provided by [REDACTED], a licensed clinical social worker, the AAO notes that the letter was general in nature and failed to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Moreover, the conclusions reached in the submitted letter do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED]'s findings speculative and diminishing the letter's value to a determination of exceptional hardship. Moreover, the applicant has failed to

document that he would be unable to visit his spouse and/or child on a regular basis or in the alternative, that they would be unable to travel to France regularly to visit the applicant.

It has also not been established that the applicant's spouse would be unable to obtain some sort of childcare, thereby permitting her to continue pursuing her career while caring for her child. Alternatively, it has not been established that the applicant's child would be unable to remain with the applicant in France for short-term periods while the applicant's spouse travels abroad for her work. In addition, although the applicant may not be able to obtain a position in France that takes advantage of his Masters of Social Work, it has not been established that he would be unable to obtain any employment in order to support his family. As such, it has not been established that the applicant's U.S. citizen spouse would suffer exceptional hardship were she to remain in the United States while the applicant relocates to France for a two-year period.

As for the applicant's child, [REDACTED] his pediatrician, references the following hardships:

I have been [REDACTED] [the applicant's child's] pediatrician since his birth on March 31, 2006.

As [REDACTED] advocate, I believe it would be detrimental to his social and emotional development to separate him from his father, [REDACTED] [the applicant]. While two years may seem insignificant to an adult, to a child at this age, two years without his father could be quite significant and in my opinion, represents great potential for exceptional emotional hardship.

On several occasions, [REDACTED] has demonstrated breath-holding spells when extremely upset. These events result in him turning blue and can result in syncope (passing out). While this condition ultimately resolves spontaneously, these years present the most vulnerable time. Separation from his father, to whom he is very attached, may increase the number and intensity of these reactions.

While many children grow up in single parent households, it is by no means the ideal. If something can be done to keep a family intact it should be done for the benefit of all, especially the innocent child....

Letter from [REDACTED] M.D., Pediatric Associates of NYC, P.C., dated February 2, 2007

Based on the documentation provided and the past medical incidents referenced by [REDACTED] the AAO concludes that the applicant's U.S. citizen child would suffer exceptional hardship were he to remain in the United States while the applicant relocates abroad for a two-year period.

As such, upon review of the totality of the circumstances in the present case, the AAO finds the evidence in the record establishes that the applicant's U.S. citizen spouse would experience exceptional hardship were she to relocate to France, but it has not been established that she would suffer exceptional hardship were she to remain in the United States without the applicant, for the requisite two-year term. Alternatively, although the record establishes that the applicant's U.S. citizen child would suffer exceptional hardship were he to remain in the United States while the applicant relocates abroad, it has not been established that he would suffer exceptional hardship were he to relocate to France with the applicant for a two-year period.

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.