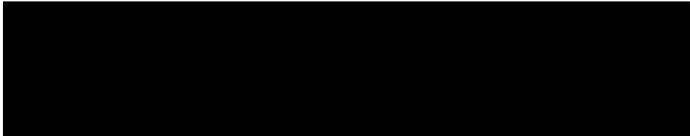


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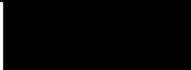
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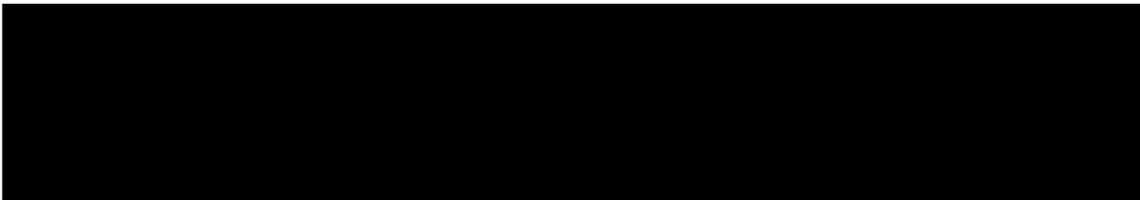
IN RE:



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.

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 applicant is a native and citizen of Jamaica. The record establishes that she obtained J-1 nonimmigrant exchange status on November 20, 2004 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 residence requirement, based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to Jamaica temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled her two-year foreign residence requirement in Jamaica.¹

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 Jamaica. *Director's Decision*, dated June 8, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides the following documents: a copy of the applicant's DS-2019, valid from December 1, 2004 through June 1, 2006; a copy of the applicant's I-485, Application to Adjust Status, denial notice, dated January 23, 2007; a declaration from the applicant's spouse, dated June 1, 2007; a reenlistment contract for the applicant's spouse, confirming his reenlistment in the United States Navy until July 30, 2008; and a copy of the applicant's spouse's Group Life Insurance Election and Certificate, listing the applicant as the beneficiary. 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

¹ Counsel states on appeal that the applicant was unaware that she was subject to the two-year home residency requirement until her I-485, Application to Adjust, was denied in January 2007. The AAO notes that the applicant's J-1 Visa, issued to her on November 16, 2004 by the Embassy of the United States in Kingston, Jamaica, has a notation that states "Bearer subject to 212(E). Two Year Rule Applies" See *J-1 Visa*, issued on November 16, 2004.

(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 (ii), 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 spouse would experience exceptional hardship if he resided in Jamaica for two years with the applicant. To support this contention, the applicant's spouse states the following:

...I am currently an active member of the United States [Navy] stationed in San Diego, California assigned to the U.S.S. Dubuque. I have been active duty in the United States Navy for four years and 10 months....

I can not go to Jamaica to live with [REDACTED] because of my commitment to the United States. I have never been to Jamaica and the way of life there would be completely different for me. In addition, I would be separated from my family in the United States....

Declaration of [REDACTED] dated June 1, 2007.

In addition to the above statement, counsel provides documentation to confirm that the applicant's spouse has re-enlisted with the United States Navy until July 30, 2008.

Based on a thorough review of the record, we have determined that exceptional hardship would exist were the applicant's spouse to accompany the applicant to Jamaica, based on his active duty status and his obligations to the United States Navy until 2008, and possibly beyond. The nature of his active duty status does not allow the applicant's spouse much freedom in terms of where he resides. Given his military obligations, it would not be feasible for him to accompany the applicant to Jamaica; this forced separation would be deemed exceptional hardship.

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 Jamaica. As stated by the applicant's spouse,

...Because of [REDACTED] [the applicant], I have become closer to my family. Before, I would see them approximately twice a year. Now we see them every other weekend.

helps keep me focused. Recently, I returned after a nine month deployment. I don't think I would have been able to deal with being away for so long if had not been waiting for me.

I believe two-year separation would be very difficult for us. It is already difficult because we are not together when I am deployed. The two year residence requirement would be an extreme hardship for me. I would be devastated.... I have been able to achieve so much more with by my side. I am better able to serve my country because of .because of s help that I was able to make the decision to re-enlist in the Navy. Now I am planning on making the Navy my career.

Since I have been married I have received awards for good conduct and two Navy-Marine Corps achievement medals, which is an award for performance. I believe that I would not have been able to receive these awards if had not been helping me....

...We would like to start a family. We do not feel like we can do that now because of the uncertainty of s situation....

Id. at 1.

The record fails to establish that the applicant's spouse will suffer exceptional hardship were his spouse to reside in Jamaica while he remains in active duty status with the United States Navy. There is no documentation establishing that his financial, emotional or psychological hardship would be any different from other families separated as a result of a foreign residency requirement. 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)). Moreover, counsel states that military members "...are subject to extraordinary pressures and stress and they deserve special consideration..." *Form I-290B, Notice of Appeal*, dated July 5, 2007. However, 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). Finally, while the AAO sympathizes with the applicant and her spouse regarding their desire to start a family, all couples separated by a foreign residency requirement have to make alternate arrangements regarding their family. It has not been documented that such arrangements rise to the level of exceptional hardship.

The record, reviewed in its entirety, does not support a finding that the applicants' spouse will face exceptional hardship if the applicant's waiver request is denied. Although the AAO finds that the applicant has established that her spouse would experience exceptional hardship were he to relocate to Jamaica with the applicant for the requisite two-year period, the applicant has filed to establish that her spouse would suffer

exceptional hardship were he to remain in the United States without the applicant, for the requisite two-year term.

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. The waiver application is denied.