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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JAN 04 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:

SELF-REPRESENTED

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 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 5, 2004. The applicant received government funding as a J1 exchange visitor. 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 residence requirement, based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to Uzbekistan 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 Uzbekistan.

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 Uzbekistan. *Director's Decision*, dated August 8, 2007. The application was denied accordingly.

In support of the appeal, the applicant submits an affidavit, dated August 13, 2007, and an affidavit from her U.S. citizen spouse, [REDACTED] dated August 13, 2007. The entire record was reviewed and considered in rendering this decision.

Section 212(e) of the Act states in pertinent part that:

- (e) 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 spouse would experience exceptional hardship if he resided in Uzbekistan for two years with the applicant. To support this contention, the applicant states the following:

...In Uzbekistan my husband and I would suffer extreme hardship in that my country lacks religious freedoms, and other human rights. It would be difficult for my husband to go to a Muslim country and not be allowed to practice his religion, specifically where in the country there is an anti-Christian campaign. In addition my country has a problem of under employment and poverty is prevalent in its population. In my country 60% of women are unemployed. I am afraid that if we return to Uzbekistan will not be able to support my children.¹ The economy in Uzbekistan is so poor that the professional jobs have been largely eliminated...

Declaration of [redacted] dated October 31, 2006.

The applicant's spouse further details the hardship he would face were he to relocate to Uzbekistan with the applicant. As stated by the applicant's spouse:

...I am Christian and she [the applicant] became a Christian Baptist and will be persecute (sic) by the Government and Uzbek all society.

Affidavit of [redacted] dated August 13, 2007.

No corroborating evidence has been provided to document that the applicant and her spouse would be unable to secure gainful employment in Uzbekistan. Moreover, the applicant has not provided evidence that supports the contention that her spouse would be at risk due to their religious affiliation, nor has any evidence been provided that demonstrates that any restrictions on the applicant's spouse's religious practice would cause him exceptional hardship. While the applicant has provided articles about country conditions in Uzbekistan, they are general in nature and do not specifically pertain 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)). As such, the AAO, contrary to the district director's decision, concludes that it has not been demonstrated that the applicant's spouse would experience exceptional hardship were he to accompany the applicant to Uzbekistan for two years.

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 Uzbekistan. As stated by the applicant's spouse,

¹ The record indicates that the applicant has two children, born in 1993 and 1996, presumably from a previous marriage. As the record indicates that they are not U.S. citizens or lawful permanent residents, they do not qualify for consideration under section 212 (e) of the Act.

...I am very worried for my wife if she will return back to her country because I am Christian and she became a Christian Baptist and will be persecute (sic) by the Government and Uzbek all society.

I have a fear if my wife will return and reside in Uzbekistan for 2 years it will be hardship for her and for me because I can not visit my wife in Uzbekistan because I will be accused by the Uzbek Government because my wife converted from Muslim into Evangelical Baptist religion...

Id. at 1.

The AAO notes that the record contains no documentation to indicate that the applicant's spouse is presently undergoing medical or psychological treatment for stress or anxiety related to his possible separation from the applicant. Moreover, the applicant's spouse is gainfully employed, as indicated in the record. As such, it has not been established that the applicant's spouse is unable to take care of himself should the applicant have to relocate for a two-year period. Finally, it has not been established that the applicant's spouse would be unable to travel to Uzbekistan regularly to visit the applicant while she complies with her two-year home residency requirement.

The affidavit provided by the applicant's spouse shows that the applicant has a loving and devoted spouse who is concerned about the prospect of the applicant's temporary departure from the United States. Although the depth of concern and anxiety over the applicant's two-year home residency requirement is neither doubted or minimized, the fact remains that Congress provided for a waiver of the two-year foreign residence requirement only under circumstances, where exceptional hardship exists. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver to cases of "exceptional hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

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 AAO finds that the applicant has failed to establish that her spouse would suffer exceptional hardship were she to relocate to Uzbekistan while he remained in the United States and in the alternative, the AAO finds that the applicant has failed to establish that her spouse would suffer exceptional hardship if he moved to Uzbekistan with the applicant for the requisite 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 her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.