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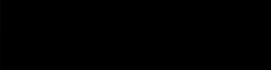
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JUN 03 2008

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:

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.

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 the Philippines. The record establishes that she obtained J-1 nonimmigrant exchange status in June 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 foreign residence requirement, based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to the Philippines 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 the Philippines.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 the Philippines. *Director's Decision*, dated March 7, 2008. The application was denied accordingly.

In support of the appeal, the applicant's spouse provides a letter and referenced attachments. 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,

¹ The record contains no documentation that confirms that the applicant's spouse is a U.S. citizen. However, for purposes of this appeal, the AAO will proceed with the assumption that the spouse was born in the United States, as was declared by the applicant on the Form I-612, Application for Waiver of Foreign Residence Requirement.

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

...I don’t have the funds to go to the Philippines for 2 years since we just put all our savings down for the house with car loans and 2 cars. I can’t afford to lose a good job as a Chief Engineer for the past six years at the Holiday Inn where I met her....

Letter from [REDACTED]

It has not been established that the applicant and/or her spouse would be unable to obtain gainful employment in the Philippines. Moreover, it has not been documented that the applicant’s spouse would be unable to resume his employment in a same or similar position upon his return to the United States from the Philippines. Finally, it has not been documented that the applicant and her spouse would be unable to sell their new home, and/or rent it to a third party, thereby assisting with the finances related to a relocation abroad. 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 concludes that the applicant has not demonstrated that her spouse would experience exceptional hardship were he to accompany the applicant to the Philippines 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 the Philippines. As stated by the applicant’s spouse,

...there is more than financial loss if [REDACTED] [the applicant] returns back to the Philippines. If this waiver gets denied, I am losing my bestfriend [sic], the girl that I want to spend my life with and a big part of me....

Aside from love, here is one reason why it would be hard for me to lose her. I am epileptic. I suffer seizures when I fall asleep at night. Eversince [sic] we lived together, I only suffered one seizure attack [sic] in the beginning of our relationship. She constantly reminds me, stays with me and takes me to my doctor’s appointments. Before her, I had to live with my parents so I can be monitored at night....

.. We are currently in the process of closing our first house....

Id. at 1.

No medical documentation from the applicant's treating physician has been provided that outlines the applicant's spouse's current medical condition, its gravity, the treatment plan, and what specific hardships the applicant's spouse will face without the applicant's physical presence in the United States for a two-year period. The applicant's spouse references his parents in his letter; it has not been established that they would not be able to assist their son should the need arise while the applicant is residing abroad.

Moreover, no current financial documentation with respect to the applicant and her spouse has been provided to corroborate the statements made by the applicant's spouse that he would experience exceptional financial hardship were the applicant to reside abroad for two years. In addition, as referenced above, it has not been documented that the applicant would be unable to obtain gainful employment in the Philippines, thereby allowing her to assist her spouse with the household expenses. Finally, it has not been documented that the applicant's spouse would be unable to visit the applicant in the Philippines on a regular basis during the two-year period.

As referenced above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof. While the applicant's spouse may need to make adjustments with respect to his own care and living arrangements while the applicant resides abroad for two years, it has not been shown that such adjustments would cause the applicant's spouse exceptional hardship. The applicant's spouse's hardship, if he remained in the United States for two years without the applicant, does not go beyond that normally suffered upon the temporary separation of a husband from his wife.

The AAO finds that the applicant has failed to establish that her spouse would suffer exceptional hardship were she to relocate to the Philippines while her spouse remained in the United States and in the alternative, if her spouse moved to the Philippines with the applicant for the requisite two-year term. Thus, 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 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.