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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 21 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.

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 Venezuela. The record establishes that she was admitted to the United States in J1 nonimmigrant status in September 1999 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 seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to her lawful permanent resident spouse. The applicant also seeks a waiver of the two-year foreign residence requirement based on persecution on account of political opinion.

The director determined that the applicant failed to establish that her lawful permanent resident spouse would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Venezuela. The director additionally found that the applicant had failed to establish she would be subject to persecution on account of political opinion if she returned to Venezuela. *Director's Decision*, dated November 13, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provided a statement detailing the hardships to the applicant; additional information about social and political conditions in Venezuela; documentation with respect to the applicant's spouse's active enlistment with the U.S. Army; a copy of a letter sent to the applicant confirming that her employment would cease upon expiration of her employment authorization, dated September 11, 2007; a copy of a bank letter sent to the applicant, confirming that she has failed to make timely mortgage payments, dated November 19, 2007; a copy of a bank letter sent to the applicant, confirming that she qualifies for relief under the Soldiers' and Sailors' Civil Relief Act, dated September 20, 2007; and articles about separations and reunions for soldiers and their psychological impact. In addition, on January 9, 2008, counsel provided supplemental documentation in support, including, inter alia: a letter from the applicant's spouse, dated December 15, 2007; a letter from the U.S. Department of the Army, confirming that the applicant's spouse is scheduled to return from holiday leave on January 2, 2008, dated December 19, 2007; a copy of the power of attorney executed by the applicant's spouse, naming the applicant as his lawful attorney-in-fact, dated September 18, 2007; a copy of an attorney letter sent to the applicant and her spouse regarding the short sale of the home, dated December 17, 2007; and a copy of a bank letter, sent to the applicant, confirming that she had filed to make timely mortgage payments, dated December 17, 2007. 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(I): 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. (Quotations and citations omitted).

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 based on hardship is to demonstrate that exceptional hardship would be imposed on the applicant's spouse if he moved with the applicant to Venezuela for a two-year period. As the applicant's spouse states,

...My name is [REDACTED]. I joined the ARMY on August 5th, 2007 to serve The United States of America. I did it with the purpose to serve the country that has given me the opportunity to have a better life and to start a family on my own....

Letter from [REDACTED], dated December 15, 2007.

In addition to the applicant's spouse's documented obligation to the United States Army as an active enlistee, counsel also provides numerous articles regarding the problematic country conditions in Venezuela. The Department of State, in its Consular Information Sheet for Venezuela, states, in pertinent part, the following:

Venezuela is a medium income country with a substantial oil industry. The political situation in Venezuela is highly polarized and volatile. Violent crime is a continuing problem. Assaults, robberies and kidnappings occur throughout the country...

Violent crime in Venezuela is pervasive, both in the capital, Caracas, and in the interior. The country has one of the highest per-capita murder rates in the world. Armed robberies take place in broad daylight throughout the city, including areas generally presumed safe and frequented by tourists. A common technique is to choke the victim into unconsciousness and then rob them of all they are carrying. Well-armed criminal gangs operate with impunity, often setting up fake police checkpoints. Kidnapping is a particularly serious problem, with more than 1,000

reported during the past year alone. According to press reports at least 45 foreigners have been kidnapped in the first eight months of 2007. Investigation of all crime is haphazard and ineffective. In the case of high-profile killings, the authorities quickly round up suspects, but rarely produce evidence linking these individuals to the crime. Only a very small percentage of criminals are tried and convicted.

Maiquetía Airport, the international airport serving Caracas, is dangerous and corruption is rampant. Concerns include personal property theft, mugging, and “express kidnapping” in which individuals are taken to make purchases or to withdraw as much money as possible from ATMs, often at gunpoint. The Embassy has received multiple, credible reports that individuals with what appear to be official uniforms or other credentials are involved in facilitating or perpetrating these crimes. For this reason, American citizen travelers should be wary of all strangers, even those in official uniform or carrying official identification. There are also known drug trafficking groups working from the airport. Travelers should not accept packages from any persons and should keep their luggage with them at all times.

Because of the frequency of robberies at gunpoint, travelers are encouraged to arrive during daylight hours if at all possible. If not, travelers should use extra care both within and outside of the airport. The Embassy strongly advises that all arriving passengers make advance plans for transportation from the airport to their place of lodging. If possible, travelers should arrange to be picked up at the airport by someone who is known to them. The Embassy has received frequent reports recently of armed robberies in taxicabs going to and from the airport at Maiquetía. There is no foolproof method of knowing whether a taxi driver at the airport is reliable. The fact that a taxi driver presents a credential or drives an automobile with official taxi license plates marked “libre” is no longer an indication of reliability. Incidents of taxi drivers in Caracas overcharging, robbing, and injuring passengers are common. Travelers should take care to use radio-dispatched taxis or those from reputable hotels. Travelers should call a 24-hour radio-dispatched taxi service from a public phone lobby or ask hotel, restaurant, or airline representatives to contact a licensed cab company for them...

Harassment of U.S. citizens by pro-government groups, Venezuelan airport authorities, and some segments of the police occurs but is quite limited. Venezuela’s most senior leaders, including President Chavez, regularly express anti-American sentiment. The Venezuelan government’s rhetoric against the U.S. government, as well as American culture and institutions, is slowly affecting attitudes in what used to be one of the most pro-American countries in the hemisphere.

U.S. Department of State, Consular Information Sheet for Venezuela, dated November 1, 2007.

The AAO has determined that exceptional hardship would exist were the applicant's spouse to accompany the applicant to Venezuela, based on his active duty status and his obligations to the United States Army. 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 Venezuela.

Moreover, counsel has provided substantial documentation regarding the problematic country conditions in Venezuela. As such, irrespective of the applicant's spouse's current U.S. military obligations, the AAO further concludes that due to the problematic country conditions in Venezuela, the applicant's lawful permanent resident spouse would experience exceptional hardship were he able to accompany the applicant to Venezuela for the requisite period.

The second step required to obtain a waiver based on hardship is to establish that exceptional hardship would be imposed on the applicant's spouse if he remained in the United States during the two-year period. As stated by the applicant's spouse,

....My wife has played a very important role in the success of my ARMY Basic Training, Advanced Training, and starting military career. Her love, strength, and the morale and emotional sustain she has given me have kept me strong when I did not think I could have made it. I still need her love and valuable support to effectively continue serving my country. My wife and I are aware that I will be deployed to Iraq or to another zone in conflict where American troops are serving. In that case, it is vital for me to leave with the peace in mind that my wife will be fine, and also that she will be safe...I immensely need her support....

Supra at 1.

Counsel has not provided any documentation from a mental health professional that describes the ramifications that the applicant's spouse would experience were he to be separated from the applicant for the requisite period. Further, the record does not indicate that they are currently living together as she is in Virginia and he is based at Fort Sam Houston, Texas. As such, they are already experiencing separation.

In addition, no financial information has been provided with respect to the applicant and her spouse's current economic situation, to document that the applicant's spouse will experience exceptional financial hardship due to his wife's two-year absence. The AAO notes that the record does contain bank letters written to the applicant, stating that she had fallen behind on her mortgage payments. However, the record also confirms that she was ultimately eligible to obtain relief under the Soldiers' and Sailors' Civil Relief Act and/or through the short sale of the property. The only other financial information provided is a list of household monthly expenses, dated December 9, 2005; however, no current evidence of the applicant's and her spouse's income, nor of their expenses, is provided, to corroborate the aforementioned list. Moreover, it has not been

established that the applicant is unable to obtain gainful employment in Venezuela, thereby assisting with the maintenance of the U.S. household. While the applicant's spouse may need to make adjustments with respect to his financial situation while the applicant resides abroad due to her foreign-residence requirement, it has not been shown that such adjustments would cause the applicant's spouse exceptional hardship.

Finally, no documentation has been provided that establishes that the applicant, a native and citizen of Venezuela, would be in danger in her home country, thereby causing the applicant's spouse exceptional emotional and/or psychological hardship. In fact, there is no statement in the record from the applicant herself detailing what dangers or hardships she has endured in the past, and/or what dangers she would endure were she to return to Venezuela. 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 AAO further finds that counsel has failed to establish that the applicant would be subject to persecution in Venezuela on account of her political opinion. Persecution has been defined as "...a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive." *Matter of Acosta*, 19 I & N, Dec. 211 (BIA 1985). Unlike applicants for refugee or asylee status, who may establish a well-founded fear of persecution on account of five separate grounds including race, religion, nationality, membership in a particular social group, or political opinion, an applicant for a waiver under section 212(e) of the Act must establish that he or she **would be** persecuted on account of one of three grounds, race, religion or political opinion.

To support the assertion that the applicant would be persecuted in Venezuela, a statement prepared by counsel and numerous articles regarding problematic country conditions in Venezuela are provided. Counsel contends that the applicant's membership with the pro-democracy political party COPEI (Partido Social Cristiano de Venezuela) will lead to her persecution based on political opinion. The U.S. Department of State, in its Country Reports on Human Rights Practices-Venezuela, states the following, in pertinent part:

Venezuela is a constitutional democracy with a population of approximately 26 million. In December 2006 voters reelected President Hugo Chavez of the Fifth Republic Movement (MVR) with approximately 63 percent of the popular vote. Official observation missions from both the European Union and Organization of American States (OAS) deemed the elections generally free and fair....

The constitution provides citizens the right to change their government peacefully, and citizens exercised this right through periodic elections held on the basis of universal suffrage....

Country Reports on Human Rights Practices-Venezuela, U.S. Department of State, dated March 11, 2008.

Based on the U.S. Department of State's published report, Venezuela is a democratic country, and opponents to the ruling party are not in any way subject to persecution. Counsel fails to provide any documentation, in addition to her political identification card, which outlines the applicant's specific political involvement—past

and/or present—with said organization, and counsel also fails to document that based on this membership and/or involvement, the applicant will be persecuted. The information counsel submitted regarding the treatment of political dissidents is from 2004 and earlier, is very general in nature and does not indicate widespread attacks.

The AAO further notes that counsel states that “...the Venezuelan Government is nationalizing businesses and forcing mandatory registration into the ruling party as a condition of employment...” *Letter in Support of Appeal*. However, when the notice referenced by counsel is read by the AAO, it only states that “...enrolment (sic) is mandatory for those workers who are committed with our process change...” *Notice*, dated May 4, 2007. As such, it has not been documented that the applicant will be subject to persecution based on political opinion, nor has it been documented that by not joining a specific political party, she will be unable to obtain gainful employment in Venezuela.

Moreover, counsel states that the applicant will be persecuted based on being married to a member of the U.S. military. No evidence to support this assertion has been provided. 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). The statute requires that the applicant establish she would be persecuted, a very high standard. Counsel's claim that she would be persecuted based on her political opinion and her marriage to a U.S. citizen has not been established.

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.