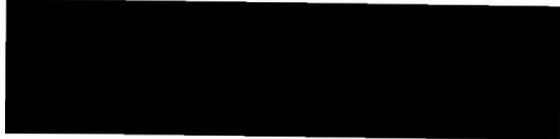


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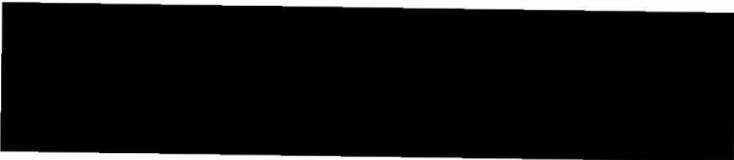
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAY 21 2008

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:



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 the Philippines who was granted J1 nonimmigrant exchange status in May 2002. 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 the Exchange Visitor Skills List. The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen spouse and step-child, born in August 1996, would suffer exceptional hardship if they moved to the Philippines 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 the Philippines.

The director determined that the applicant failed to establish that his U.S. citizen spouse and/or step-child would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in the Philippines. *Director's Decision*, dated September 18, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated October 30, 2007; duplicate copies of documents previously submitted with the Form I-612 filing; additional information about country conditions in the Philippines; and a Psychological Evaluation of the [REDACTED] Family, dated October 11, 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(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 U.S. citizen spouse and/or step-child would experience exceptional hardship if they resided in the Philippines for two years with the applicant. To support this contention, the applicant's spouse states the following:

...I am a Personal Banker at Bank of America, Napa, CA where I have worked since November 2003. I have work related benefits such as 401 K investments, vacation and sick leaves and medical plans. I have contributed to the Social Security Administration since I started working. I pay my taxes. I cannot quit my job, or go on extended leave of absence from my work to be with my husband in the Philippines if his application is not approved.

I have worked hard to build my present career. My present company is among the most established and prestigious financial institutions in the country and around the world. It will be detrimental for me if I have to leave my present job to face an uncertain future in another country.

I would need to apply for government permit to remain in the Philippines for more than 21 days and work. And even if I obtain a work permit, I may not even find a suitable job or a salary comparable to what I am earning in the United States. With the keen competition and the scarcity of good paying jobs in the Philippines it would already be tantamount to risking my future (and that of my family) if I decide to relocate to this country. Furthermore, the cost of transportation alone for the entire family constitutes a substantial drain on our savings, not to mention the added cost of establishing a household.

Without a viable means of income I could not take a chance, especially with a minor child in tow. It is uncertain if [redacted] [the applicant] could find a job, which could support us, his family, in the Philippines.

My immediate family are US citizens...my father...my mother...my sister...my brother, and...my daughter, and [redacted] s step-daughter.

A lot of Filipinos, and the American community in the Philippines as well, are leaving the Philippines due to the recent terrorist activities of the Community Party and the Abu-Sayyaf, culminating in several violent episodes and explosions in the busy spots of the nation. Most recent consular information on travel to the Philippines warn Americans traveling to the Philippines on the increased risk of terrorist actions from foreign and domestic groups....

If I join [redacted], I am not confident that my medical needs, and that of [redacted] [the applicant's step-child], will be satisfied by the Philippines' medical facilities and hospitals. Neither can I risk if they have the same or similar care providers, latest medications, or adequate, applicable technology, which have kept me and my family safe....

I will lose my medical and health coverage or protection programs. My health plans are not covered in the Philippines. If I, or our U.S. citizen daughter, get sick, or had an emergency medical condition, I might not be able to afford the prohibitive cost of our medical expenses....

eats only American food and speaks and understands no other language except English. She is used to our cool climate....

needs pediatric check-ups and completes her immunization programs. She needs good, clean and safe environment.

She has friends in her school and enjoys being with her age group with whom she has many things in common. She will be total stranger in the Philippines since she has no friends there and is not accustomed to its educational system.

is in her formative years. She needs a school which will nurture her academically and emotionally. She needs stability. It would be traumatic for her to go to a school with an entirely different educational system. It is a disruption which may have an effect on her in her later years. We have very good schools in our area, and Joyce must not be deprived of this opportunity....

Affidavit of J dated April 25, 2007

A February 13, 2008 Travel Warning issued by the U.S. Department of State corroborates the statements made by the applicant with respect to the problematic country conditions in the Philippines. As stated in the warning,

This Travel Warning updates information on the security situation and reminds Americans of the risks of travel in the Philippines. This Travel Warning supersedes the Travel Warning for the Philippines issued April 27, 2007.

U.S. citizens contemplating travel to the Philippines should carefully consider the risks to their safety and security while there, including those due to terrorism. While travelers may encounter such threats anywhere in the Philippines, the southern island of Mindanao and the Sulu Archipelago are of particular concern. Travelers should exercise extreme caution in both central and western Mindanao as well as in the Sulu Archipelago.

Kidnap for ransom gangs operate in the Philippines. In October 2007, one such gang abducted a visiting U.S. citizen whose whereabouts are unknown at this time. Several other foreigners were also kidnapped for ransom in 2007. The New People's Army (NPA), a terrorist organization, operates in many rural areas of the Philippines, including in the northern island of Luzon. While it has not targeted foreigners in several years, the NPA could threaten U.S. citizens

engaged in business or property management activities, and it often demands “revolutionary taxes.”

Terrorist groups, such as the Abu Sayyaf Group and the Jema’ah Islamiyah, and groups that have broken away from the more mainstream Moro Islamic Liberation Front or Moro National Liberation Front, have carried out bombings resulting in deaths, injuries and property damage. On January 3, 2008, a bomb exploded at a Cotabato City disco pub, killing one and injuring eight. The central and western areas of Mindanao have also experienced bombings targeting bus terminals and public buildings. While those responsible do not appear to have targeted foreigners, travelers should remain vigilant and avoid congregating in public areas; a recent bombing outside the House of Representatives in Metro Manila resulted in a number of deaths and injuries to bystanders.

U.S. Government employees must seek special permission for travel to Mindanao or the Sulu Archipelago. When traveling in Mindanao, U.S. official travelers attempt to lower their profile, limit their length of stay, and exercise extreme caution. Some foreigners who reside in or visit western and central Mindanao hire their own security.

Travel Warning-Philippines, Bureau of Consular Affairs, U.S. Department of State, issued April 27, 2007.

Based on the documentation provided, the AAO finds that the hardship the applicant’s step-child would encounter were she to relocate to the Philippines 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. The record establishes the turmoil and safety concerns with respect to being a U.S. citizen residing in the Philippines. Moreover, the record establishes that the applicant’s step-child is integrated into the U.S lifestyle and educational system. She has never lived outside the United States and she does not speak, read or write in the native language of the Philippines. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant’s child at this stage of her education and social development and relocate her to the Philippines, far away from her birth father, who is stationed with the Navy in San Diego, California, would be a significant disruption that would constitute exceptional hardship. As such, based on a totality of the circumstances, the AAO concurs with the director that the applicant’s child would encounter exceptional hardship were she to relocate to the Philippines.

In regards to the hardship the applicant’s spouse would face were she to relocate to the Philippines with the applicant, no corroborating and objective evidence has been provided to establish that the applicant and/or his spouse, a personal banker, would be unable to obtain gainful employment with adequate health insurance coverage in the Philippines. 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, no documentation has been provided with respect to the applicant's spouse's involvement with and attachment to her parents and siblings, to establish that a temporary separation from them would lead to exceptional emotional and/or psychological hardship. In fact, nothing in the record indicates that the applicant's spouse would be unable to return to the United States on a regular basis to visit said family members. Moreover, the applicant's spouse is a native of the Philippines. It has not been established that she would suffer exceptional hardship were she to return to her native country for a two-year period due to her familiarity with the country.

In a psychological evaluation conducted by Dr. [REDACTED], Licensed Psychologist, the applicant's spouse was diagnosed with Major Depressive Disorder, Single Episode, Moderate and Generalized Anxiety Disorder. Although the input of any mental health professional is respected and valuable, the submitted evaluation from [REDACTED] appears to be based on a single interview between the applicant, his family and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the depression and anxiety disorders suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on an apparent single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of exceptional hardship. Finally, although [REDACTED] has diagnosed the applicant's spouse with the above-referenced mental conditions, the applicant's spouse is able to maintain full-time gainful employment. Her psychological conditions clearly do not hinder her ability to maintain an active professional career and assist in supporting her family.

Irrespective of the above conclusions, the AAO notes that the applicant's child should not be separated from her mother, the applicant's spouse, for a two-year period, due to the psychological and emotional ramifications of separating a mother from her young child. As such, due to this concern, the AAO concurs with the director that the applicant's child will experience exceptional hardship were she to relocate for two years with the applicant to the Philippines, and by extension, it would be a hardship for the applicant's spouse to reside in the Philippines for a two-year period, based on the hardship such relocation would cause on her young U.S. citizen child.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse and/or step-child would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in the Philippines. As stated by the applicant's spouse,

...if [REDACTED] s [the applicant's] J-1 Waiver application is denied and he is compelled to return to the Philippines, our family will break up and there will be an unjust severance of ties between husband and wife and father and daughter. Our relationship, which was nurtured by our deep commitment, love and respect for each other, will suffer, and may end because of the great physical distance between us....

[REDACTED] is kind, loving, supportive and a good provider. His priority is his family— [REDACTED] [the applicant's step-child] and me. [REDACTED], my daughter from my

first husband, will be separated from [REDACTED]. [REDACTED] adores [REDACTED] whom she fondly calls 'my dad'. She will be an innocent victim of this unfortunate situation. She does not deserve to be deprived of the physical presence and love of [REDACTED]....

I will not be able to support another household even if I were to remain in the U.S. if [REDACTED] is sent back to the Philippines. I will be forced to save every penny earned in order for me to be able to pay all our financial obligations....

My take home pay is approximately \$1600.00/month. [REDACTED]'s income is approximately \$9,908.00/month. Thus, with the aforementioned obligations, there is no way I could support another household in another country or remain financially viable in the U.S. without [REDACTED]'s share of the expenses....

...I do not want to be separated from my husband at any time, yet I could not join him in his return to his home country....This dilemma is taking a toll on my overall emotional well being....the thought of a permanent or indefinite separation from him is giving me sleepless nights. My overall emotional state is not good....

[REDACTED] has gotten very close of [REDACTED], although he is not her biological father. She looks up to him in every way a young girl looks up to his (sic) father. She idolized him. [REDACTED], in turn, loves and cares for [REDACTED] like his own flesh and blood. [REDACTED] will be greatly affected if [REDACTED] were to separate from her. She looks forward to their weekend together. She is proud to introduce [REDACTED] to her friends and brags what a 'great dad' he is. She will definitely suffer from an abrupt separation from [REDACTED]. I do not want to see my daughter get hurt again. She has grown attached to [REDACTED] and is closer to him than her biological father....

Supra at 2-3, 6-10.

With respect to the applicant's step-child, no objective, corroborating evidence has been provided that establishes what specific involvement the applicant's step-child has with the applicant, and what the ramifications would be if her step-father were to relocate abroad for two years. As noted above, a one-time psychological evaluation does not suffice to establish that the applicant's step-child will suffer exceptional emotional and/or psychological hardship due to her step-father's temporary relocation abroad. In addition, it has not been established that the applicant's step-child's birth father can not take a more active role in his child's life, thereby ensuring that she does not suffer exceptional hardship due to her step-father's absence.

With respect to the applicant's spouse, it has not been established that she would be unable to travel to the Philippines, her native country, to see the applicant on a regular basis. Moreover, while the applicant's spouse may need to make adjustments with respect to her financial situation and the care of her child when not in school, it has not been established that such adjustments would cause the applicant's spouse exceptional hardship. The applicant's spouse has an extended familial support network. It has not been established that they would be unable to assist her if the need should arise. In addition, no evidence has been provided that establishes that the applicant would be unable to obtain gainful employment in the Philippines, thereby assisting in the maintenance of the U.S. household. As noted above, the applicant's spouse lives an

active life, working full-time in gainful employment while raising her daughter. It has not been established that the applicant's physical absence for a two-year period would cause her spouse exceptional hardship.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse and/or child will face exceptional hardship if the applicant's waiver request is denied. Although the AAO finds that the applicant's spouse and step-child will suffer exceptional hardship were they to relocate abroad for a two-year period, it has not been established that they will suffer exceptional hardship were they to remain in the United States while the applicant relocates to the Philippines for a two-year period. The AAO thus concludes that the record does not support a finding that the applicant's spouse and/or step-child 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 his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.