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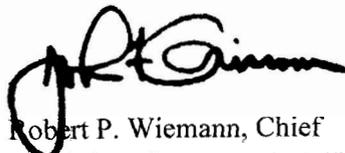
IN RE: [Redacted]

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:
[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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Center Director, Vermont Service Center. The applicant appealed but due to the untimely nature of the filing, the appeal was treated as a motion by the center director. The Center Director's decision to deny the application was affirmed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the previous decision of the Center Director to deny the waiver application will be re-affirmed.

The record reflects that the applicant, a native and citizen of Grenada, obtained J-1 nonimmigrant exchange status on August 14, 1990 to participate in a program funded by the United States Agency for International Development. He 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), based on government financing. The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen child, born in September 2006, would suffer exceptional hardship if she moved to Grenada temporarily with the applicant and in the alternative, if she remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Grenada.

The center director determined that the applicant failed to establish that his U.S. citizen child would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Grenada. *Center Director's Decision*, dated May 10, 2007. The application was denied accordingly.

Counsel for the applicant provides three letters in support of the appeal. 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 AAO notes that the applicant makes numerous references to the hardships his fiancée and stepchild would encounter were the applicant's waiver request denied. Section 212(e) of the Act provides that a waiver is applicable solely where the applicant establishes exceptional hardship to his or her citizen or lawfully resident spouse or child. Under section 101(b)(1)(b) of the Act, a stepchild is defined as a child that had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred. In this case, the applicant is not married to the child's mother. As such, the applicant's fiancée's child does not qualify as a stepchild pursuant to the Act. Nor does the applicant's fiancée qualify as a spouse pursuant to the Act as they are not married. Thus, in the present case, the applicant's daughter, [REDACTED], is the only qualifying relative, and hardship to the applicant, his fiancée, her U.S. citizen child from a previous relationship, and/or the applicant's extended relatives cannot be considered, except as it may affect the applicant's daughter.

The first step required to obtain a waiver is to establish that the applicant's U.S. citizen child would experience exceptional hardship if she resided in Grenada for two years with the applicant. The only reference to this criteria is a statement from counsel, who asserts: "[h]e [the applicant] has no home in Grenada; no job or expectation of a job in Grenada and no family there. For those reasons, Petitioner [the applicant] would multiply the exceptional hardship one-hundred fold should he venture to take his family to Grenada..." *Counsel's Letter in Support of Appeal*, dated June 8, 2007. 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). Counsel has failed to establish, with corroborating evidence, what specific hardships the applicant's U.S. citizen child would face were she to reside in Grenada with the applicant for a two-year period. As such, it has not been established that the applicant's child would suffer exceptional hardship were she to reside in Grenada with the applicant for a two-year period.

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

[REDACTED] [the applicant's child] and I live as one loving family.... I am the only working member of my family. I am permanently employed as a plumber.... I earn \$35 per hour...

From my salary, I pay the rent of \$975 per month for our apartment....

I also provide 100% of all the necessities for my family, including rent, food, clothing, medical, telephone light and gas....

Accordingly, my presence in the household is absolutely necessary for my family's survival, and my absence from my family would cause exceptional hardship for my daughter.... If I were forced to return to Grenada, I would be unable to adequately care for my family in the USA because the salary in Grenada is very low, payment is usually once per month and the payment is in Eastern Caribbean Currency, which currency rate is approximately 3:1....

No documentation has been provided to establish that the applicant's fiancée is unable to obtain gainful employment with adequate health care coverage, thereby assisting with the maintenance of the U.S. household and the care of their daughter. Nor has it been established that the applicant, a plumber, is unable to obtain gainful employment in Grenada, thereby assisting with the maintenance of the U.S. household. Moreover, the record indicates that numerous members of the applicant's family reside in the United States legally, including his siblings and father; it has not been established that they would be unable to assist with respect to the financial and emotional care of the applicant's child during his two-year absence. Finally, it has not been established that the applicant's child would be unable to travel to Grenada with her mother, a national of Grenada, to visit with the applicant on a regular basis. 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, it has not been established that the applicant's U.S. citizen child would suffer exceptional hardship were she to remain in the United States with her mother and half-sibling while the applicant relocates abroad for a two-year period.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen child will face exceptional hardship if the applicant's waiver request is denied. The applicant has failed to establish that his child would suffer exceptional hardship if she moved to Grenada with the applicant for the requisite two-year period, and in the alternative, the applicant has failed to establish that his child would suffer exceptional hardship were she to remain in the United States with her mother and half-sibling while the applicant relocates to Grenada for a two-year period. The record demonstrates that the applicant's child faces no greater hardship than the unfortunate but expected, disruptions, inconveniences, and difficulties arising whenever a parent temporarily relocates abroad based on a foreign residence requirement.

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.