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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 24 2008

IN RE: [REDACTED]

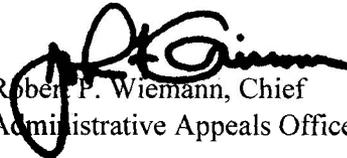
APPLICATION: Application for Waiver of of the Foreign Residence Requirement under Section 212(e)
of the Immigration and Nationality Act; 8 U.S.C. § 1182(e).

ON BEHALF OF APPLICANT:

[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 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 Argentina who obtained J-1 nonimmigrant exchange status to participate in graduate medical training. The applicant 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 foreign residence requirement, based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to Argentina temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Argentina.

The director determined that the applicant failed to establish that her U.S. citizen spouse would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Argentina. *Director's Decision*, dated June 6, 2008. The application was denied accordingly.

In support of the appeal, counsel for the applicant submits the following: a brief, dated June 23, 2008; a psychological evaluation in regards to the applicant's spouse, dated July 28, 2008; a letter from the applicant's treating physician, dated July 23, 2008; letters from the applicant's spouse's friends and family; a letter from the applicant's spouse, dated July 21, 2008; information about country conditions in Argentina; and photographs of the applicant and her spouse. 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).

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. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant, their friends and/or their ministry cannot be considered, except as it may affect the applicant's spouse.

The first step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would experience exceptional hardship if he resided in Argentina for two years with the applicant. To support this contention, the applicant's spouse states the following:

I am a United States citizen by birth....

Because I cannot speak Spanish, enough to effectively communicate in a career path and/or participating in everyday activities, it would be virtually impossible to function and be competitive in their Argentinean society.

To be able to function as a hospice Chaplain, as I now do here in the US, communication with my patients is imperative. Because of the confidentiality of Chaplain/Patient conversations, the use of an interpreter would be out of the question.

As a U.S. born citizen, I know how we do things here in the good old USA! I would not know what would be socially or professionally acceptable in Argentina. Their approach to many common situations would certainly leave me in culture shock, having spent my whole life here in the U.S....

Affidavit of [REDACTED] dated August 9, 2007.

No documentation has been provided that confirms that the applicant's spouse would be unable to obtain gainful employment in Argentina. Even if he were unable to work as a chaplain based on the language barrier, as he contends, it has not been demonstrated that the applicant's spouse would suffer exceptional hardship obtaining employment in another position. Moreover, even if the AAO were to concur with the applicant's spouse that he would be unable to obtain gainful employment in Argentina due to the language barrier, it has not been demonstrated that the applicant, a physician, would be unable to obtain gainful employment in her home country, thereby ensuring financial viability for her and her husband.

In addition, although the record indicates that the applicant's spouse has suffered numerous medical conditions, no letter has been provided by a medical professional detailing the medical and/or physical hardships the applicant's spouse would encounter were he to relocate to Argentina. 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)). Finally, counsel asserts that Argentina "[is] currently facing a severely struggling economy, public unrest due to increased export taxation on its farming community and food shortages...." *Brief in Support of Appeal*, dated June 23, 2008. The AAO notes, however, that the U.S. Department of State has no travel warnings for Argentina, and in fact, points out that "Argentina's charm, natural beauty and diversity attracted more than 400,000 American citizen visitors, and this year's total is

expected to be even higher. Buenos Aires and other large cities have well-developed tourist facilities and services, including many four- and five-star hotels.... Most American citizens visit Argentina without incident....” *Country-Specific Information-Argentina, U.S. Department of State*, dated October 2, 2008. Thus, it has not been established that the applicant’s U.S. citizen spouse would encounter exceptional hardship were he to relocate to Argentina based on his spouse’s two-year foreign residency requirement.

The second step required to obtain a waiver is to establish that the applicant’s U.S. citizen spouse would suffer exceptional hardship if he remained in the United States during the two-year period that the applicant resides in Argentina. As stated by the applicant’s spouse:

Each morning when we begin our day, not only is it my normal habit to go in and kiss my wife to wake her, but we also pray together.... As soon as we arrive home at the end of the day, we will sit together on the couch, discussing the events of the day, again sharing our lives together. After we’ve eaten dinner, and before retiring for the evening, we continue to spend time together. Each night we sit together in the living room, read the Bible together, and pray together before going to bed as well.

On weekends, we walk together along the canal.... When we walk together, we’re not just side-by-side, or even just holding hands. When we walk together, we have our arms around each other....

It would be utterly inconceivable to think of me, a US citizen, separated from my wife.... In our almost 9 years of marriage, I can count the number of times we have not spent the night together, on one hand. The only times we have spent time apart, have been for a Christian retreat, or when I was injured, and spent the night in the hospital....

Supra at 2.

To support the applicant’s spouse’s assertions that he would suffer exceptional emotional and/or psychological hardship were the applicant to relocate abroad for a two-year period, a psychological evaluation is provided by

Ph.D., As Dr. [REDACTED] states:

My 1 ½ hour clinical interview with Mr. [REDACTED] [the applicant’s spouse], a **Caucasian** 53 year old male, revealed a state of acute distress resulting from the possibility that his wife, [REDACTED] [the applicant], could face deportation to Argentina....

It is my professional conclusion that this individual will suffer ongoing extreme hardship if his wife is returned to Argentina; the situation has already caused mental, emotional, legal, social, and financial constraints for both of them. He has shown remarkable composure.... However, given his historical development of PTSD [Post Traumatic Stress Disorder] and his existing and extensive medical problems, it is quite likely that he will be at high risk for exacerbation and possibly suicide if his hardship waiver is not granted....

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse 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 disorders suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a 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] references that the applicant's spouse has been diagnosed with an adjustment disorder and could be suicidal at some point in the future, no recommendations have been made by [REDACTED] with respect to the applicant's spouse's appropriate treatment, such as regular therapy sessions or other treatment, and/or medications, to further support the gravity of the situation.

The AAO notes that in addition to the above evaluation, counsel for the applicant submitted a letter from the applicant's spouse's treating physician. As [REDACTED] D.O. states,

I have been the treating physician for [REDACTED] [the applicant's spouse] following an electrocution injury occurring at work on July 16, 2004. Mr. [REDACTED] has permanent medical problems as a result of this electrocution. He suffers from arthritis and hypertension as a result of his injury. This puts him at risk for a heart attack and/or stroke.

[REDACTED] has relied on his wife [the applicant]...for emotional support.... It is my medical determination that Mr. [REDACTED] requires the presence of his wife both financially and for emotional support or the patient would suffer significant hardship....

Letter from [REDACTED], D.O., Patchen Family Practice, dated July 23, 2008.

[REDACTED] fails to specifically outline what the applicant's spouse needs from the applicant on a daily basis, and what hardships he will face were the applicant to relocate abroad for a two-year period. The statements made by [REDACTED] are general in nature and do not specifically outline the applicant's spouse's needs in relation to the applicant. In addition, the record indicates that the applicant's spouse has an extensive support network of friends, family and ministry; it has not been established that they would be unable to assist him during his spouse's two-year absence. Moreover, it has not been established that the applicant's spouse would be unable to travel to Argentina on a regular basis to visit his wife. Finally, the applicant's spouse's situation does not appear to be exceptional as he has been gainfully employed long-term, in the past as an electrician and now, as a Hospice Chaplain, ministering to others.

As for any financial hardship referenced in the record, no documentation regarding the applicant and her spouse's financial situation, including income and expenses, has been provided to establish that a relocation abroad would cause the applicant's spouse exceptional financial hardship. Moreover, as previously referenced by the AAO, counsel provides no evidence to substantiate that the applicant, a physician, would not be able to obtain gainful employment were she to relocate to Argentina, thereby assisting the applicant's spouse with the U.S. household expenses. While the applicant's spouse may need to make adjustments with respect to his financial situation and his daily care 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.

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 applicant has failed to establish that her spouse would suffer exceptional hardship if he moved to Argentina with the applicant for the requisite two-year period and alternatively, the applicant has failed to establish that her spouse would suffer exceptional hardship were she to relocate to Argentina while he remained in the United States. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse 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 her burden. Accordingly, the appeal will be dismissed.

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