

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

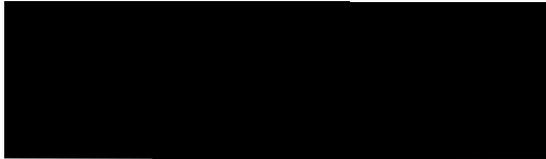
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529-2090  
MAIL STOP 2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H3



FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: OCT 31 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:

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, Nebraska Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the matter will be remanded to the Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State (DOS), Waiver Review Division (WRD).

The record reflects that the applicant is a native and citizen of Russia who was admitted to the United States in J-1 nonimmigrant exchange status on August 4, 2004 to participate in a program funded by the U.S. Department of State. She 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 and step-daughters would suffer exceptional hardship if they moved to Russia temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled her two-year foreign residence requirement in Russia.

The director determined that the applicant failed to establish that her U.S. citizen spouse and/or step-daughters would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Russia. *Director's Decision*, dated January 30, 2007. The AAO dismissed the applicant's appeal, finding that she had not established that her spouse and step-daughters would suffer exceptional hardship if they remained in the United States while she fulfilled her two-year foreign residence requirement in Russia. *AAO Decision*, dated January 25, 2008.

In support of the instant motion, the following documentation was submitted, *inter alia*: a letter and statement from the applicant and her spouse, dated April 18, 2008; a letter from the applicant's spouse's mother, dated April 17, 2008; a psychological evaluation, dated May 25, 2006; a psychological evaluation, dated March 26, 2008; documentation relating to the applicant's step-daughters; information about country conditions in Russia; documentation relating to the applicant's spouse's relationship with his ex-wife; select case law; excerpts from the Act; and information related to fraudulent marriage and fiancé arrangements to obtain permanent resident immigration status. 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 spouse and/or step-daughters, [REDACTED] born in August 1996, and [REDACTED] born in June 1994, would experience exceptional hardship if they resided in Russia for two years with the applicant. The AAO, in its decision dated January 25, 2008, found that the applicant's step-daughters would encounter exceptional hardship were they to relocate to Russia for a two-year period based on the applicant's home residency requirement under section 212(e) of the Act. As such, this criteria does not need to be re-addressed at this time.

The second step required to obtain a waiver is to establish that the applicant's spouse and/or step-daughters would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in Russia. The AAO, in its decision dated January 25, 2008, concluded that exceptional hardship had not been established. With the instant motion, the applicant and her spouse address the issues raised by the AAO and further elaborate on the hardships the applicant's step-daughters would encounter were the applicant to relocate abroad for two years while they remained in the United States. As stated:

The elder daughter, who commonly goes by [REDACTED], came to live with [REDACTED] [the applicant's spouse] in February of 1997, when she was just over 2 ½ years old. She came into [REDACTED] home as a foster child. She was taken into foster care because she was taken to the hospital by her birth mother based on the fever she was running. Upon examination by a doctor, it was found that she had numerous bruises all over her body and the humerus bone in her arm was broken. The attending physician appropriately contacted social services and she was removed from her birth home at that time. She was placed in a temporary foster home and then into [REDACTED]'s home where she was reunited with her baby sister. [REDACTED] spent several of the next years in therapy as supporting documentation shows. Further examination of [REDACTED] revealed that she had been sexually molested (presumably by her step-father), and therapy revealed that the physical abuse was probably perpetrated by her biological mother. This abuse all occurred before Jane had reached the age of three.

When, [REDACTED] and her sister [REDACTED] were initially placed at [REDACTED] home, they lived with [REDACTED] (now [REDACTED]'s ex-wife) as well as [REDACTED].... [REDACTED] was emotionally abusive to [REDACTED] and neglectful of both girls.... Before long, [REDACTED] abandoned the girls and [REDACTED] completely, in favor of a boyfriend....

The younger daughter, [REDACTED] was removed from her biological home based on the abuse to her sister.... As an infant, she was extremely afraid of water and would cry when water was running into the bath tub. [REDACTED] alleged that her sexual abuse occurred in the bath, which may explain [REDACTED]'s fear of water at that time. In addition, [REDACTED] had a great deal of difficulty sleeping through the night....

As mentioned above, [REDACTED] lack of commitment to the girls and her husband soon led to the breakup of the family. Both children (the whole family) were abandoned in the favor of a lover...and after a two-year court battle between [REDACTED] and his ex-wife, he was granted primary custody of the children. Following the court battle, [REDACTED] continued to arrange her life as she saw fit, ignoring the needs of the girls to have her in their lives. She frequently missed visits with them, and eventually moved from the first boyfriend to a different boyfriend. During the times when the girls did have visits, she consistently violated court orders.... After [REDACTED] moved to Ohio, his ex-wife moved to Tennessee without informing the girls, and has managed to show up for 4 visits over the course of nearly three years (out of 24 scheduled visits) and as of today, April 8<sup>th</sup>, 2008, she has not exercised any visits or contact with the girls whatsoever since February 17, 2006. [REDACTED] has even refused to pay the child support.... She has completely abandoned [REDACTED] and [REDACTED]. This abandonment has left [REDACTED] [the applicant] as the only mother who is involved in their lives. She is their mother, caretaker, teacher, counselor, support and the only female role model in their lives...

In summation, [REDACTED] and [REDACTED] both United States citizens, have had difficulties in their lives with their mother figures. Their first mother figure, their biological mother, was physically abusive to the point of breaking a two year olds arm. Their adoptive mother was neglectful, what ultimately lead to physical and emotional trauma, verbally abusive, and eventually abandoned the girls completely. Their third mother, [REDACTED] is doing everything in her power to protect them from further damage....

In contrast to [REDACTED]'s ex-wife, [REDACTED] has been a faithful wife and mother, has supplied the children with needed love, guidance, companionship, and motherly advice, and has been the one stable female in the lives of these girls during the formative years when they are transitioning from being girls to young women....

In this case, the US citizen children have suffered tremendously previously and would suffer exceptional emotional hardships if the only stable mother figure they have had in their lives were to suddenly disappear for two years. They have already suffered from psychological issues, and both of them have in the past undergone therapy as has been documented here. Their prior emotional problems should not be dismissed as irrelevant, especially given the fact that [REDACTED] is the first and the only stable motherly figure they have had.... The difficulties they have experienced throughout their short lives have been documented here,

and to suggest that another significant upheaval in their lives would not create exceptional hardship is short-sighted at best, and certainly neglects the 'best interests of the children.'

The initial denial of the hardship waiver has already been not in the 'best interests of the children.' It has caused a great deal of stress within the entire family, which resulted in both individual and family counseling.... In January of 2008, the younger child, [REDACTED] started home-school, because she was experiencing a long list of emotional and mental problems.... She was brought home for schooling for the remainder of the year to help reduce her anxiety and to allow her to, as [REDACTED] said, '...spend as much time with her mom as she can till somebody takes her away.'

If [REDACTED] [the applicant] will have to leave The United States, her daughters will not be able to have adequate child care, because [REDACTED] is currently a stay at home mother.... If [REDACTED] will be forced to leave the United States, he will have a hard time looking for an appropriate baby-sitter, granted his busy schedule, which has frequent absences (trips and conferences), as well as late work in the office....

[REDACTED] does not have the option to receive help from his relatives, parents in this case, who are senior citizens, fully employed and involved in numerous charity organizations, as well as church organizations....

*Statement in Support of Motion.*

The applicant has provided documentation that corroborates the statements made above regarding her step-daughters' problematic and abusive past and its negative effects on their mental health, as confirmed by numerous psychological evaluations contained in the record from July 1999 to the present. In addition, in a recent psychological evaluation provided by [REDACTED], she states as follows:

[REDACTED] and [REDACTED] [the applicant's step-daughters], both emotionally fragile, would both experience a recurrence or worsening of the Separation Anxiety Disorders and depressive symptomatology they have been dealing with their whole lives in the event that they become separated from [REDACTED]. Currently, they both suffer from nightmares and [REDACTED] has had adjustment difficulties at school and may have eating issues. They suffered abuse and abandonment from two mothers already; loss of the one true mother they have ever known would be catastrophic. It would be an even greater hardship for them to lose her at this point when they are both entering adolescence and must negotiate menstruation and other bodily changes, social pressures, and other major life issues that a girl desperately needs a mother for...

*Psychological Evaluation of [REDACTED], dated March 26, 2008.*

The applicant's step-daughters have a unique and tragic past, having been subjected to trauma and violence at the hands of their biological mother and step-father; and trauma, abuse and abandonment by their adoptive

mother. The applicant's step-daughters have an emotional need to remain with their step-mother, their primary caregiver and the source of stability for them. Living with their adoptive father while their step-mother resides thousands of miles away would create hardship that would go significantly beyond that normally suffered upon the temporary separation of families. The AAO thus concludes that the applicant's step-daughters would experience exceptional hardship were they to be separated from their step-mother for a two-year term.<sup>1</sup>

The AAO finds that the applicant has established that her U.S. citizen step-daughters would experience exceptional hardship were they to Russia and in the alternative, were they to remain in the United States without the applicant, for the requisite two-year term. 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 met her burden. The motion to reopen will be granted. The AAO notes, however, that a waiver under section 212(e) of the Act may not be approved without the favorable recommendation of the DOS. Accordingly, this matter will be remanded to the director so that he may request a DOS recommendation under 22 C.F.R. § 514. If the DOS recommends that the application be approved, the secretary may waive the two-year foreign residence requirement if admission of the applicant to the United States is found to be in the public interest. However, if the DOS recommends that the application not be approved, the application will be re-denied with no appeal.

**ORDER:** The instant motion to reopen will be granted and the matter will be remanded to the Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State (DOS), Waiver Review Division (WRD).

---

<sup>1</sup> As the AAO has determined that exceptional hardship exists with respect to the applicant's U.S. citizen step-daughters were the applicant to relocate to Russia for a two-year period, it is not necessary to evaluate whether the applicant's U.S. citizen spouse would experience exceptional hardship were the applicant to relocate abroad for a two-year period.