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U.S. Citizenship
and Immigration
Services

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FILE: A 26 305 599 Office: CALIFORNIA SERVICE CENTER Date: **SEP 18 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.

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 Indonesia who was admitted to the United States in J-1 nonimmigrant status in 1990. She 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 her two-year foreign residence requirement, based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to Indonesia temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled her two-year foreign residence requirement in Indonesia.

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 Indonesia. *Director's Decision*, dated March 6, 2007. The application was denied accordingly.

In support of the appeal, counsel provides a letter from the applicant's spouse, dated March 14, 2007 and supporting documentation relating to the applicant's and her spouse's medical conditions. 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 record contains numerous references to the hardships that the applicant would suffer were her 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. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant 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 Indonesia for two years with the applicant. To support this contention, the applicant's spouse states the following:

I am permanently injured (only one of my eyes and my ears are functioning, and I am also having a lot of pain on my back due to the injure [sic]), while my wife [the applicant] had diagnosed as having suspicious cells in her thyroid and had a surgery to take her thyroid, and after that she had breasts cancer and got bilateral mastectomy about two years ago followed by chemotherapy and radiations.... She has to take the medication constantly for five year after the surgery. My wife is in pain in all her joints, but she is optimistic that the treatment is good for her to prevent the cancer cells from recurrent [sic]. Due to the situation in Indonesia where we are not sure about the kind of treatment she will get and what will happen to her health, my wife is very skeptical that she won't survive if she has to leave United States.... I am afraid that her life could be in danger....

Letter from J [REDACTED], dated March 14, 2007.

The applicant further states:

I doubt that I would be able to secure employment in Indonesia in my field of expertise. The educational system is not well developed, and there are not a lot of opportunities for educational psychologists. Furthermore, I would be considered to be an outsider there, and would be at a distinct disadvantage in competing for the few jobs in my field that are available....

Affidavit of [REDACTED], dated December 14, 2006.

To support the applicant's spouse's statements regarding his medical situation, a letter is provided by Dr. As [REDACTED] states:

I am the primary care physician for [REDACTED] [the applicant's spouse] who is under my medical care for essentially high blood pressure as well as a significant chronic pain syndrome....

Letter from [REDACTED], Community Care Physicians, P.C., dated September 25, 2006.

In addition, [REDACTED] states the following regarding the applicant's medical conditions and the hardships she would face were she to relocate to Indonesia:

[REDACTED] [the applicant] is under my medical care as well as being followed regularly by a local oncologist for a history of bilateral breast carcinoma as well as hypothyroidism and osteoporosis. She has undergone significant surgery for her breast cancer as well as subsequent radiation therapy, chemotherapy and is currently maintained on hormonal therapy....

...her [the applicant's] medical condition would very likely suffer significant deleterious effects were she to be forced to return to her native Indonesia, where appropriate medical and oncologic care may well not be adequately available....

Letter from [REDACTED], *Community Care Physicians, P.C.*, dated September 25, 2006.

It has not been objectively established that the applicant and/or her spouse would be unable to obtain adequate medical coverage were they to relocate to Indonesia. Moreover, no documentation has been provided that establishes that the applicant and/or her spouse would be unable to obtain gainful employment in Indonesia, thereby ensuring financial stability while the applicant's spouse resides in Indonesia. Finally the record indicates that the applicant has two adult children residing in Indonesia, born in 1976 and 1981; it has not been established that they would be unable to assist the applicant and/or her spouse while they reside in Indonesia for a two-year period, should the need arise. 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 thus concludes that the applicant has failed to establish that her U.S. citizen spouse will experience exceptional hardship were he to relocate to Indonesia for a two-year period.

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 Indonesia. As asserted by the applicant's spouse,

I am still disabled, and I work part-time.... [REDACTED] [the applicant] has been able to provide financial assistance which I depend on. Furthermore, [REDACTED] assists me with taking care of our home. Due to my disability, I do not believe that I would be able to take care of a home and live alone if she did not live with me. Furthermore, I would be emotionally devastated if [REDACTED] were forced to leave the United States....

Affidavit of J [REDACTED] dated December 14, 2006.

No documentation has been provided that outlines the applicant's spouse's specific disability, the gravity of the situation, the short and long-term treatment plan, what specific assistance he needs from the applicant, and what hardships he will face due to the applicant's relocation abroad. The AAO notes that the letter from [REDACTED] referenced above makes no mention of a disability pertaining to the applicant's spouse.

Moreover, although the applicant's spouse states that he will suffer emotional devastation due to the applicant's absence, counsel has not provided any documentation from a mental health professional that describes the emotional hardship that the applicant's spouse would experience were he to be separated from the applicant for two years. In addition, no documentation has been provided that establishes that the applicant's spouse would be unable to travel to Indonesia to visit with the applicant.

Furthermore, no financial documentation relating to the applicant and her spouse has been provided to corroborate the statements made by the applicant's spouse that he would experience exceptional financial hardship were the applicant to reside abroad for two years. As stated above, going on record without supporting documentary evidence is not sufficient for establishing exceptional hardship pursuant to section 212(e) of the Act. Finally, it has not been established that the applicant would be unable to obtain gainful employment in Indonesia, thereby assisting her husband with respect to the U.S. household expenses should the need arise. While the applicant's spouse may need to make adjustments with respect to the maintenance of the household and his own care while the applicant resides abroad for two years, it has not been shown that such adjustments would cause the applicant's spouse exceptional hardship. The applicant's spouse's hardship, if he remained in the United States for two years without the applicant, does not go beyond that normally suffered upon the temporary separation of a husband from his wife.

The AAO finds that the applicant has failed to establish that her U.S. citizen spouse would suffer exceptional hardship if he relocated to Indonesia with the applicant for the requisite two-year period and in the alternative, were he to remain in the United States while the applicant returned to Indonesia for a two-year period. As such, the record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen spouse 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 her burden. Accordingly, the appeal will be dismissed.

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