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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER DATE: APR 03 2009

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting 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 the Dominican Republic who contends that 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). The applicant thus seeks a waiver of the two-year foreign residence requirement, based on the claim that his U.S. citizen spouse and children would suffer exceptional hardship if they moved to the Dominican Republic temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled the two-year foreign residence requirement in the Dominican Republic.

The director concluded that the record failed to establish that the applicant had ever been admitted under section 101(a)(15)(J) of the Act and/or participated in a J-1 Exchange Visitor Program. As such, the applicant had no grounds to apply for a Form I-612, Application for Waiver of the Foreign Residence Requirement (Form I-612). The I-612 was denied accordingly. *Decision of the Director*, dated November 25, 2008.

On December 29, 2008, the applicant appealed the decision, by submitting the Form I-290B, Notice of Appeal (Form I-290B). The applicant asserted that he had entered the United States under section 101(a)(15)(J) of the Act and had participated in a J-1 exchange visitor program. The applicant further contended that he would send proof of his J-1 status within 30 days. As of today, no additional documentation has been provided by the applicant and as such, the record is considered complete.

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.

The record establishes that the applicant was admitted to the United States on October 29, 2005 as an alien crewman, with a valid C-1 Visa, issued by him by the U.S. Embassy of the United States, Dominican Republic, on October 25, 2005.¹ The AAO thus concurs with the director that the applicant is not eligible for a Form I-612 adjudication, as he has failed to establish that he was previously admitted and/or obtained the status of a J-1 who is subject to a two-year foreign residence

¹The nonimmigrant visa issued to the applicant on October 25, 2005 specifically notes the visa type as "C-1/D" and an annotation on the visa states "[REDACTED]" See *Copy of Nonimmigrant Visa. Section 101(a)(15)(C) references "an alien in immediate and continuous transit through the United States...."* Despite the applicant's assertions to the contrary, there are no notations on the visa that indicate J-1 status and/or participation in an exchange visitor visa program.

requirement.² Accordingly, the instant appeal will be dismissed.

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

² The AAO notes that the applicant noted his C-1 status on the Form I-130, Petition for Alien Relative, and on the Form I-485, Application to Register Permanent Residence or Adjust Status, filed on November 5, 2006. At no time has the applicant listed J status on his immigration forms.