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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



**U.S. Citizenship
and Immigration
Services**

#3 #2

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: DEC 31 2009

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

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.

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-612, Application for Waiver of the Foreign Resident Requirement (Form I-612) was denied by the District Director, Baltimore, Maryland and appealed to the Administrative Appeals Office (AAO). The decision of the district director was withdrawn due to lack of jurisdiction and the matter was remanded to the Director, California Service Center, to review and issue a new decision on the applicant's Form I-612 application. The waiver application was denied by the Director, California Service Center, and certified to the AAO for review. The director's decision will be affirmed. The waiver application will be denied.

The applicant is a native and citizen of Cote d'Ivoire who was admitted to the United States in J-1 nonimmigrant exchange status in February 2000. 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) based on U.S. government financing. The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen spouse would suffer exceptional hardship if she moved to Cote d'Ivoire temporarily with the applicant and in the alternative, if she remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Cote d'Ivoire.

The district director determined that the applicant failed to establish that a qualifying relative would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Cote d'Ivoire. *District Director's Decision*, dated December 2, 2008. The application was denied accordingly, and appealed to the AAO on December 16, 2008. *See Form I-290B*, dated December 16, 2008.

On August 11, 2009, the AAO concluded that the district director had erred in adjudicating the applicant's Form I-612, due to lack of jurisdiction over Form I-612 applications. The decision of the district director was withdrawn and the matter was remanded to the Director, California Service Center, to issue a new decision on the applicant's Form I-612. *See Decision of the AAO*, dated August 11, 2009.

The director determined that the applicant failed to establish that a qualifying relative would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Cote d'Ivoire. The application was denied accordingly and said decision was consequently certified for review to the AAO. *Director's Notice of Certification*, dated August 14, 2009.

To begin, the AAO notes that the applicant was given 30 days from the date of the Director's Notice of Certification to submit a brief or other written statement for consideration. As of today, no documentation has been submitted by counsel, the applicant and/or the applicant's U.S. citizen spouse, in support of the application. As such, the record is considered complete, and has been reviewed and considered in its entirety 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 U.S. citizen spouse would experience exceptional hardship if she resided in [REDACTED] for two years with the applicant. The applicant's spouse contends that she would suffer emotional hardship due to the fears and anxieties of relocating to a country experiencing political upheaval. In addition, she notes that she would suffer due to long-term separation from her children from a previous marriage, born in 1983 and 1987, and unfamiliarity with the country, language, culture and customs. She also asserts that she would suffer career interruption, as she has been gainfully employed, long-term, as a Registered Nurse. Finally, she contends that she would suffer financial hardship, due to substandard economic conditions in Cote d'Ivoire. *Affidavit of [REDACTED]* dated May 7, 2008.

Documentation has been provided to support the applicant's spouse's assertions regarding the problematic country conditions in [REDACTED] including high crime, political upheaval, and a substandard economy. In addition, the AAO notes that the U.S. Department of State has issued a Travel Warning for U.S. citizens intending to travel to Cote d'Ivoire. As noted by the U.S. Department of State, in pertinent part:

The Department of State warns U.S. citizens of the continued risks of traveling to [REDACTED] and urges them to exercise caution while

traveling there. This replaces the Travel Warning for [REDACTED] dated December 15, 2008, to update information on the security and political situation.

[REDACTED] has been a divided country since a 2002 failed coup attempt evolved into an armed rebellion that split the country in two. [REDACTED] signed the [REDACTED] in March 2007, and a new government was formed with Soro as [REDACTED]. Implementation of the accord is ongoing, with elections scheduled for late 2009, but the government has not regained full control of the northern part of the country which remains under the de-facto control of the New Forces. [REDACTED] in [REDACTED] currently operates a peacekeeping mission, and France maintains the Force [REDACTED] support of [REDACTED].

Given the unpredictable and sometimes tense situation in regions throughout the country, and the ongoing presence of two distinct military/peacekeeping forces, the Department of State urges U.S. citizens to exercise caution should they travel to [REDACTED] and to take special care when traveling outside Abidjan. Security conditions in the north and in the west can deteriorate without warning.

Crimes such as mugging, robbery, burglary, and carjacking pose the highest risk for foreign visitors in [REDACTED]. Visitors should be careful when stopped in heavy traffic or at roadblocks due to the threat of violent robbery, and should avoid travel outside of the city after dark. Land routes to neighboring countries are open, although overland travel to Liberia and Guinea is strongly discouraged, and caution is urged when crossing into [REDACTED].

Presidential elections are scheduled for November 29, 2009, but preparations are behind schedule. Although the unstable and unpredictable security environment that led to previous evacuations no longer prevails, Americans traveling to Cote d'Ivoire should follow political developments carefully, as there is potential for violence in the run-up to, and aftermath of, elections.

Travel Warning- [REDACTED] U.S. Department of State, dated September 22, 2009.

Based on a totality of the circumstances, the AAO concurs with the director that the applicant's U.S. citizen spouse would suffer exceptional hardship were she to relocate to [REDACTED] due to the problematic country conditions, long-term separation from her children, unfamiliarity with the

country, language, culture and customs, and career disruption. A relocation abroad would cause the applicant's spouse hardship that would be significantly beyond that normally suffered upon the temporary relocation of families due to a foreign residency requirement.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would experience exceptional hardship if she remained in the United States while the applicant relocated abroad for a two-year period. In the applicant's spouse's declaration, she asserts that she would suffer emotional and financial hardship. As she states,

If my husband [the applicant] returns to Ivory Coast without me, I will worry daily about him. I will worry about his safety in that war-torn country. I will also worry that he won't be able to find a job to support himself.

We have been trying to have a baby.... Sending my husband back to Ivory Coast, will take my ultimate desire away for ever. Thus increasing even more, my despair and mental anguish....

If I am separated from my husband, I will no longer have the constant emotional support from my husband.... As a result, I worry that my depression would become significantly worse....

I will suffer an overwhelming financial burden. I will have to find a way to support myself, my husband in Ivory Coast, my two children who are in college, and meet my financial obligations in this country....

Supra at 2.

In support of the emotional hardship referenced, a psychological evaluation has been provided by [REDACTED] states that the applicant's spouse has been diagnosed with Adjustment Disorder with Depressed Mood and concludes that if the applicant were to relocate abroad, the applicant's spouse's "relatively mild depression...is likely to become worse.... [T]he loss would be greater and the social support significantly lower, thus increasing the possibility of becoming depressed...." See *Psychological Evaluation from* [REDACTED] dated August 28, 2007. In addition, a letter has been provided by [REDACTED] who states that the applicant's spouse has been his patient since June 2006 and is being treated for Adjustment Disorder with Depressed Mood. See *Letter from* [REDACTED] dated April 27, 2007.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation from [REDACTED] is based on three interviews, in April, June and August 2007, between the applicant's spouse and the psychologist. The conclusions reached in the submitted evaluation, being based on three interviews that occurred more than a year prior to the appeal submission, 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. Furthermore, with respect to [REDACTED] letter, the AAO again notes that it was written more than a year prior to the appeal submission and, as noted by the director, the letter "lacks important details...in determining the severity of the patient's diagnosis, when she was diagnosed with this disorder, how often was the patient being seen, what treatments were prescribed, the patient's prognosis, the duration of the treatment..." *Supra* at 5. The documentation provided by [REDACTED] also fails to reference what role, if any, the applicant plays with respect to his spouse's mental care and what specific hardships the applicant's spouse will face were the applicant physically absent for a two-year period. Finally, while the AAO sympathizes with the applicant's spouse regarding her desire to have children within a specific timeframe with the applicant, all couples separated due to a foreign residency requirement have to make alternate arrangements if they want to conceive. It has not been documented that such arrangements rise to the level of exceptional hardship.

As for the financial hardship referenced by the applicant's spouse, the record establishes that the applicant's spouse earns \$38.00 an hour. *See Letter from [REDACTED] Supplemental Staffing, University of Maryland Medical Center*, dated May 7, 2008. On the Form I-864, Affidavit of Support, signed by the applicant's spouse in March 2004, she declared that her annual salary was \$92,000. *See Form I-864*, dated March 11, 2004. The applicant's spouse is making well over the poverty guidelines. *See Form I-864P, Poverty Guidelines for 2009*. No documentation pertaining to the applicant's spouse's expenses, assets and liabilities has been provided. It has thus not been established that the applicant's U.S. citizen spouse is unable to support herself financially without the applicant's contributions. Moreover, it has not been established that the applicant would be unable to obtain gainful employment in [REDACTED] that would provide him with sufficient income to support himself, thereby ameliorating the financial hardship referenced by the applicant's spouse with respect to having to financially support her husband while he resides in [REDACTED]. 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)). While the applicant's spouse may need to make alternate arrangements with respect to her own care and the maintenance of the household due to the applicant's physical absence, it has not been established that such arrangements would cause her exceptional hardship. As such, the AAO concurs with the director that it has not been established that the applicant's spouse would suffer exceptional hardship were she to remain in the United States while the applicant relocates abroad to fulfill the two-year foreign residency requirement.

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. Although the AAO finds that the applicant would suffer exceptional hardship if she moved to [REDACTED] with the applicant for the requisite two-year period, the applicant has failed to establish that his spouse would suffer exceptional hardship were he to relocate to [REDACTED] while she remained in the United States.

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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 decision of the director will be affirmed.

ORDER: The decision of the director is affirmed. The waiver application is denied.