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



U.S. Citizenship
and Immigration
Services

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FILE:

Office: DETROIT

Date: MAR 19 2009

IN RE:

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:

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 Field Office Director, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Morocco, was admitted to the United States in J-1 nonimmigrant exchange visitor status in October 1999. The applicant 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 funding.¹ 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 Morocco temporarily with the applicant and in the alternative, if she remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Morocco.

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 Morocco. *Field Office Director's Decision*, dated December 19, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant submits a brief, dated February 4, 2008. 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

¹ Counsel for the applicant asserts that the applicant was not aware that he was subject to the two-year foreign residence requirement. *See Form I-290B*, dated January 10, 2008. The AAO notes that the Form IAP-66, presented by the applicant to both consular officials, when applying for a J-1 visa, and to immigration officials, when applying for entry to the United States, in October 1999, clearly indicates that the applicant is subject to the foreign residency requirement due to government financing, namely, through the U.S. Geological Survey, a U.S. government agency. *See Form IAP-66*.

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 Morocco for two years with the applicant. With respect to this criteria, the applicant's spouse asserts that she could not live in Morocco because "life is difficult enough to cope with here [in the United States], let alone in a foreign culture..." *Affidavit of [REDACTED]* dated August 4, 2005. 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)).

Counsel further contends that the applicant's spouse's educational opportunities would be disrupted were she to relocate abroad, as she is pursuing her education. The record does not establish the applicant's spouse's current academic plans and what, if any, implications a departure for two years would mean for her education and/or prospective career. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As such, it has not been established that the applicant's spouse would suffer exceptional hardship were she to relocate abroad for a two-year period.

The second step required to obtain a waiver is to establish that the applicant's spouse would suffer exceptional hardship if she remained in the United States during the two-year period that the applicant resides in Morocco. With respect to this criteria, the applicant's spouse asserts that she will suffer exceptional emotional and financial hardship. In her affidavit she states that she would suffer exceptional emotional hardship due to the long and close relationship they have, and that she would suffer exceptional financial hardship because she is unemployed and applying to go to school to study medical billing and fashion design. *Id.* at 1.

To begin, it has not been established that the applicant will suffer exceptional emotional hardship due to the applicant's two-year absence. It has also not been established that the applicant's spouse is unable to travel to Morocco to visit the applicant. Moreover, no current financial documentation has been provided to establish the applicant's current financial contributions to the family, to demonstrate that without his physical presence in the United States, the applicant's spouse will suffer exceptional financial hardship. Nor has it been established that the applicant's spouse is unable to obtain gainful employment while pursuing her education and/or in the alternative, that she is unable to obtain financial assistance, such as loans and/or a scholarship, to pursue her academic studies. Alternatively,

it has not been established that the applicant is unable to obtain gainful employment in Morocco, thereby assisting with the maintenance of the U.S. household. While the applicant's spouse may need to make adjustments with respect to her financial situation while the applicant resides abroad due to his 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 U.S. citizen spouse will face exceptional hardship if the applicant's waiver request is denied. 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 his burden. Accordingly, the appeal will be dismissed.

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