

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**

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

43

APR 07 2010

FILE:



Office:

CALIFORNIA SERVICE CENTER

Date:

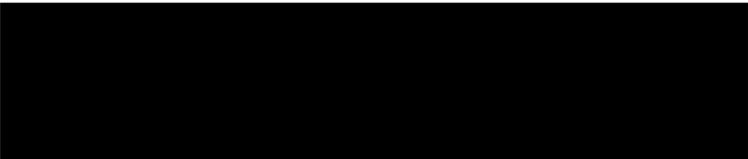
IN RE:



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

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-612, Application for Waiver of the Foreign Residence Requirement (Form I-612) 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 record establishes that the applicant, a native and citizen of Liberia, was admitted to the United States in J-2 nonimmigrant status, as the dependent child of [REDACTED], a J-1 visa holder who entered the United States to participate in graduate medical training. The applicant 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 would suffer exceptional hardship if he moved to Liberia 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 Liberia.

The director noted that U.S. Department of State (DOS) regulations dictate that a J-2 applicant cannot independently apply for a waiver of the two-year foreign residence requirement. The director concluded that since the DOS regulations dictate that a J-2 cannot independently apply for a waiver of the two-year foreign residence requirement, the Form I-612 must be denied. *Director's Decision*, dated September 15, 2009. The Form I-612 was denied accordingly.

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.

On appeal, counsel for the applicant asserts that the J-1 visa holder, [REDACTED], has complied with the two-year foreign residence requirement and as such, the applicant is no longer subject to the two-year foreign residence requirement under section 212(e) of the Act. Alternatively, counsel contends that the applicant is eligible to apply for a J-2 waiver independently, by filing the Form I-612.<sup>1</sup> *Brief in Support of Appeal*, dated October 14, 2009.

Irrespective of counsel's assertion that since the J-1 has completed the two-year foreign residence requirement, the applicant is no longer subject to section 212(e) of the Act, the AAO concurs with the director that the applicant remains subject to the two-year foreign residence requirement under

---

<sup>1</sup> Counsel, on appeal, notes and documents that the U.S. Department of State specifically instructed him to file the Form I-612 based on exceptional hardship on the applicant's behalf. *Hardship Letter of Instruction from U.S. Department of State*, dated August 19, 2008. He contends that "this letter implies that the Department of State has given me a favorable recommendation on their part for the waiver." *Brief in Support of Appeal*, dated October 14, 2009. The AAO urges counsel to contact the U.S. Department of State directly to resolve this issue, as it appears that the instructions provided by the U.S. Department of State on August 19, 2008 apply to a J-1 visa holder requesting a waiver based on exceptional hardship, as noted in paragraph two of the letter, not to a J-2 who is ineligible for a hardship waiver, as is the case in this instance.

section 212(e) of the Act. As quoted above, section 212(e) of the Act states, in pertinent part, that a person admitted under section 101(a)(15)(J) is subject to the two-year foreign residence requirement. Section 101(a)(15)(J) of the Act specifically references the principal and the spouse and minor children accompanying or following to join. As such, pursuant to the Immigration and Nationality Act, irrespective of the fact that the J-1 principal may have complied with section 212(e) of the Act by fulfilling her two-year foreign residence requirement, the applicant remains subject to section 212(e) of the Act.

Moreover, the AAO notes that the U.S. Department of State, on its website, confirms that a J-2 is subject to the same requirements as a J-1. Furthermore, the DOS states that J-2s cannot independently apply for a waiver, and in cases of death or divorce from the J-1, or when a J-2 child reaches age 21, the Waiver Review Division may consider requests for waivers on behalf of the J-2 on a limited case-by-case basis. *See Frequently Asked Questions, travel.state.gov, U.S. Department of State.*

As noted by the director and corroborated by the U.S. Department of State in writing, the applicant's options to fulfill the requirements as set forth under section 212(e) of the Act are to: 1) return to her home country for a two-year period or 2) obtain an interested government agency recommendation from the U.S. Department of State.<sup>2</sup> The applicant has failed to establish that she returned to her home country for two years. Nor has she established that the U.S. Department of State has recommended a waiver on her behalf as an Interested Government Agency. As such, the USCIS is prohibited from approving the Form I-612 based on her independent request for a waiver due to exceptional hardship to a U.S. citizen. The AAO thus concludes that director properly denied the applicant's Form I-612, due to lack of jurisdiction over a J-2's independent request for a waiver.

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

---

<sup>2</sup> As stated by the U.S. Department of State,

If the J-2 feels that his/her case merits special consideration by the Waiver Review Division, he/she will need to complete Form 3035 on-line, pay the processing fee, and submit the appropriate statements of reason. The Division will also need the J-1's DS-2019/IAP-66 forms and divorce decree or death certificate, whichever is applicable.