

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

H3

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **FEB 19 2010**

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.

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 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 record reflects that the applicant, a native and citizen of the Philippines, was granted J1 nonimmigrant exchange status in January 1991. 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 son, [REDACTED] born in 1993, and his lawful permanent resident son, [REDACTED] born in 1990, would suffer exceptional hardship if they relocated to the Philippines temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled his two-year foreign residence requirement in the Philippines.

The director determined that the applicant failed to establish that his children would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in the Philippines. *Director's Decision*, dated September 17, 2009. The application was denied accordingly.

In support of the appeal, counsel for the applicant submits a brief, dated October 16, 2009. 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 (ii), 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 *[redacted] 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 children would experience exceptional hardship if they resided in the Philippines for two years with the applicant. In a declaration, the applicant contends that his children would suffer hardship as they have no ties to the Philippines. He notes that his children will suffer from diminished educational opportunities in the Philippines, and will experience cultural shock. *Declaration of* [REDACTED] dated January 29, 2009.

As counsel further notes,

If the children were to move back with their father to the Philippines they would be forced to surrender the proper medical care and lifestyle necessary for their life here in the U.S. and live in a third world country with little hope for the future.... The children are currently attending high school in the Los Angeles area. They would suffer hardship....

*Brief in Support of Appeal*, dated October 16, 2009.

[REDACTED] the applicant's eldest, confirms that although he was born in the Philippines, he relocated to the United States when he was three months old. Although he returned to the Philippines when he was a year and a half old, he has not returned to visit the Philippines since that time. *Letter from* [REDACTED] [REDACTED] the applicant's youngest, confirms that he has never been out of the United States, and has never lived outside of California. *Letter from* [REDACTED]

The record establishes that the applicant's children, currently 19 and 16 years old, are integrated into the U.S lifestyle and educational system. [REDACTED] has never lived and/or traveled outside the United States and Jose has not visited his home country since he was a year and a half old. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of* [REDACTED] 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of* [REDACTED] to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate them to the Philippines would constitute exceptional hardship. As such, based on a totality of the circumstances, the AAO concurs with the director that the applicant's children would encounter exceptional hardship were they to relocate to the Philippines.

The second step required to obtain a waiver is to establish that the applicant's children would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in the Philippines. With respect to this criteria, the applicant asserts that his children would suffer economic and adverse psychological and emotional hardship were they to remain in the United States while the applicant relocates abroad for a two-year period. *Supra* at 1.

To begin, no documentation has been provided establishing that the applicant's children would suffer exceptional emotional hardship were they to be separated from their father for a two-year period. 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 notes that the children's mother resides in the United States; it has not been established that she would not be able to assist the children emotionally due to their father's absence. In addition, it has not been established that the children would be unable to travel to the Philippines to visit their father.

As for the financial hardship referenced, no documentation has been provided outlining the applicant's and his ex-wife's current financial contributions to their children and the children's current financial needs, to establish that without the applicant's physical presence in the United States, the children will suffer financial hardship. Nor has any documentation been provided to establish that the applicant would be unable to obtain gainful employment in the Philippines, thereby assisting in the maintenance of the U.S. household. Although counsel asserts that the applicant will make only a fraction of what he currently makes and his children would be placed in a position of having to go without some necessities of life, the AAO notes that 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). It has thus not been established that the applicant's physical absence for a two-year period would cause his children exceptional hardship.

The record, reviewed in its entirety, does not support a finding that the applicant's children will face exceptional hardship if the applicant's waiver request is denied. Although the AAO finds that the applicant's children will suffer exceptional hardship were they to relocate abroad for a two-year period, it has not been established that they will suffer exceptional hardship were they to remain in the United States while the applicant relocates to the Philippines for a two-year period. The AAO thus concludes that the record does not support a finding that the applicant's children 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 his burden. Accordingly, the appeal will be dismissed.

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