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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 20 2010

IN RE: [Redacted]

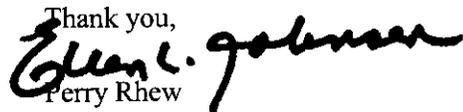
APPLICATION: Application for Waiver of the Foreign Residence Requirement under Section 212(e) of the Immigration and Nationality Act; 8 U.S.C. § 1182(e).

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Glenn L. Johnson
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 matter will be remanded to the Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State (DOS), Waiver Review Division (WRD).

The record reflects that the applicant, a native and citizen of Colombia, obtained J-1 nonimmigrant exchange status in 2005 to participate in graduate medical education training. He 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 his two-year foreign residence requirement, based on the claim that his lawful permanent resident spouse and U.S. citizen child, born in 2004, would suffer exceptional hardship if they moved to Colombia 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 Colombia.

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 Colombia. *Director's Decision*, dated July 6, 2010. The application was denied accordingly.

In support of the appeal, counsel for the applicant submits a brief, dated July 15, 2010, and referenced exhibits. 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 (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 lawful permanent resident spouse and/or U.S. citizen child would experience exceptional hardship if they resided in Colombia for two years with the applicant. With respect to this criteria, the applicant's spouse asserts that she would suffer emotional, physical, financial and career hardship were she to relocate abroad for a two-year period. To begin, she asserts that she would suffer emotional and physical hardship in Colombia due to the problematic country conditions. She explains that her own family was directly impacted by the violence in Colombia. In November 1993, her brother was murdered outside his home by members of the Revolutionary Armed Forces of Colombia (FARC), she and her sister were threatened by FARC members, and her sister was ultimately granted asylum in the United States in 2001 based on her family's past traumatic experiences in Colombia and the threat of future violence. The applicant's spouse further details that her husband, diagnosed with depression and unable to work, would suffer in Colombia as he would not be able to receive adequate medical treatment, thereby causing her exceptional hardship. *Affidavit of [REDACTED], M.D.*, dated January 3, 2007.

In support, evidence of the applicant's spouse's family member's traumatic experiences in Colombia has been provided by counsel, including an affidavit from the applicant's spouse's sister and evidence of the applicant's spouse's brother's death. In addition, documentation has been submitted outlining the applicant's problematic mental health situation, the need for continued treatment by professionals familiar with his condition and his inability to work since 2006. A letter has also been provided establishing that due to poverty, violence and unemployment, the number of patients requesting mental health services has considerably increased but due to the limited number of professionals available in Colombia to provide mental health services, there is a severe shortage of adequate mental health services. *Letter and Translation from [REDACTED], M.D., Program Director and Assistant Physician, Mental Health Unit, [REDACTED], Colombia*, dated December 18, 2006. Moreover, a letter confirming the applicant's spouse's long-term gainful employment serving the medically underserved has been provided. *Letter from [REDACTED] CEO, [REDACTED]* dated April 22, 2010. Finally, the AAO notes that the U.S. Department of State has issued a Travel Warning for Colombia. As stated by the U.S. Department of State on March 5, 2010:

The Department of State warns American citizens of the dangers of travel to Colombia. While security in Colombia has improved significantly in recent years, violence by narco-terrorist groups continues to affect some

rural areas as well as large cities. The potential for violence by terrorists and other criminal elements exists in all parts of the country. This updates and replaces the Travel Warning for Colombia issued November 10, 2009 to update information on recent security incidents and criminal activity.

In recent months there has been a marked increase in violent crime in Colombia. Murder rates have risen significantly in some major cities, particularly Medellin and Cali. Kidnapping remains a serious threat. American citizens have been the victim of violent crime, including kidnapping and murder. Firearms are prevalent in Colombia and altercations can often turn violent. Small towns and rural areas of Colombia can still be extremely dangerous due to the presence of narco-terrorists. Common crime also remains a significant problem in many urban and rural areas. For additional details about the general criminal threat, please see the Department of State's Country Specific Information for Colombia.

The incidence of kidnapping in Colombia has diminished significantly from its peak at the beginning of this decade. Nevertheless, terrorist groups such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and other criminal organizations continue to kidnap and hold civilians for ransom or as political bargaining chips. No one is immune from kidnapping on the basis of occupation, nationality, or other factors. Kidnapping in rural areas is of particular concern. On July 2, 2008, the Government of Colombia rescued 15 hostages, including three Americans, who had been held for more than five years. Although the U.S. government places the highest priority on the safe recovery of kidnapped Americans, it is U.S. policy not to make concessions to or strike deals with kidnappers. Consequently, the U.S. government's ability to assist kidnapping victims is limited.

Travel Warning-Colombia, U.S. Department of State, dated March 5, 2010.

Based on the documented problematic country conditions and security concerns for lawful permanent residents and U.S. citizens in Colombia, the applicant's spouse's and extended family's past traumatic experiences in Colombia and their effect on the applicant's spouse's emotional and psychological well-being, the applicant's critical mental health situation and the need for stability and continued treatment by professionals familiar with his condition, and career disruption, the AAO concludes that the applicant's lawful permanent resident spouse would experience exceptional hardship were she to accompany the applicant to Colombia for a two-year period.

The second step required to obtain a waiver is to establish that the applicant's lawful permanent spouse and/or U.S. citizen child would suffer exceptional hardship if they remained in the United

States during the two-year period that the applicant resides in Colombia. To begin, the applicant's spouse notes and documents that she is dependent on the applicant for assistance in taking care of their child because of her demanding work schedule as a physician. The record reflects that the applicant's spouse is required to be on call after hours and on weekends, meaning that she would have to report to work immediately at any time, day or night. Moreover, she notes that her child would suffer emotionally, as she would be separated on a long-term basis from her father, thereby causing her, as the child's mother, emotional hardship. Finally, the applicant states that were he to relocate abroad, he would suffer because mental health treatment and counseling is less available in Colombia, thereby worsening his condition of clinical depression and thus causing hardship on his wife and child. *Affidavit of* [REDACTED], dated May 27, 2010.

Counsel submits articles establishing the negative ramifications of separating young children from their parent. In addition, a letter has been provided from the applicant's child's teachers, confirming the applicant's child's close relationship to her father, and further noting that a separation from her father would have a detrimental effect on her academic development and stability. *Letter from* [REDACTED] and [REDACTED] dated April 22, 2010. Moreover, documentation has been provided establishing the applicant's spouse's demanding work schedule. *Supra* at 1. Finally, documentation regarding the lack of mental health care professionals in Colombia has been submitted by counsel. *Supra* at 1.

Based on a totality of the circumstances, the AAO finds that the applicant has established that his spouse would suffer emotional, psychological and professional hardship were she to remain in the United States while the applicant relocated abroad to fulfill his two-year foreign residency requirement. The applicant's spouse would be required to assume the role of primary emotional and financial caregiver to herself and her young child, while pursuing a demanding career, without the complete support of her spouse. Moreover, the child would be required to separate from her father, to whom she is emotionally attached, on a long-term basis, thereby causing hardship to the applicant's spouse. The applicant's spouse would also experience fears and anxieties regarding her husband's safety and well-being in Colombia, in light of her and her extended family's past traumatic experiences while residing in Colombia. Finally, the applicant, diagnosed with depression and unable to work, would find himself without his wife and child and his mental health providers in Colombia, and such a situation would cause the applicant's spouse hardship.

The AAO thus concludes that the applicant has established that his lawful permanent resident spouse would experience exceptional hardship were she to relocate to Colombia and in the alternative, were she to remain in the United States without the applicant, for the requisite two-year term. The evidence in the record establishes the hardship the applicant's spouse would suffer if the applicant temporarily departed the U.S. would go significantly beyond that normally suffered upon the temporary separation of families.¹

¹ As the AAO has determined that exceptional hardship exists with respect to the applicant's lawful permanent resident spouse were the applicant to relocate to Colombia for a two-year period, it is not necessary to evaluate whether the

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 met his burden. The appeal will therefore be sustained. The AAO notes, however, that a waiver under section 212(e) of the Act may not be approved without the favorable recommendation of the DOS. Accordingly, this matter will be remanded to the acting center director so that she may request a DOS recommendation under 22 C.F.R. § 514. If the DOS recommends that the application be approved, the secretary may waive the two-year foreign residence requirement if admission of the applicant to the United States is found to be in the public interest. However, if the DOS recommends that the application not be approved, the application will be denied with no appeal.

ORDER: The matter will be remanded to the director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State, Waiver Review Division.

applicant's U.S. citizen child would experience exceptional hardship were the applicant to relocate abroad for a two-year period.