U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H3

[redacted]

DATE: OCT 1 1 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

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:

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

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 applicant is a native and citizen of Indonesia who was admitted to the United States in J-1 nonimmigrant exchange status in 2005. She 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 the Exchange Visitor Skills List. 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 [redacted] 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 Indonesia.

The director determined that the applicant failed to establish that his spouse would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Indonesia. *Director's Decision*, dated June 28, 2012. The application was denied accordingly.

In support of the appeal, counsel submits the following: a brief; a letter from the applicant's treating physician confirming her high risk pregnancy; two articles regarding country conditions in Indonesia; and documentation regarding the applicant's business in the United States. 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
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> (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
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> (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 applicant's U.S. citizen spouse contends that he will suffer emotional and financial hardship if he relocated to Indonesia to reside with the applicant for a two-year period. To begin, the applicant's spouse asserts that if he were to relocate abroad he would be unable to acquire a job as he does not speak the language. He further explains that he and the applicant run small businesses and have a home and two pets and long-term separation from them would cause him hardship. *Letter from* [redacted] *and* [redacted] dated February 1, 2012. On appeal, counsel further references that the applicant's spouse is unfamiliar with the language spoken in Indonesia and due to xenophobia and high unemployment in Indonesia and the inability to obtain a work permit for a long time, the applicant's spouse would suffer hardship. *Brief in Support of Appeal,* dated July 24, 2012.

To begin, the two articles provided by counsel in support of the assertion that the applicant's spouse will experience xenophobia and lack of employment opportunities are general in nature and do not establish that the applicant's spouse specifically will experience hardship in [redacted] Nor has it been established that the applicant's spouse would be unable to obtain a work permit in [redacted] in a timely fashion. 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). Moreover, it has not been established that the applicant will be unable to obtain gainful employment and/or continue her business pursuits while in [redacted] thereby providing financial support to her husband. Finally, the AAO notes that the applicant is in a high risk pregnancy and due in March 2013. No documentation has been provided from the applicant's treating physician establishing the hardships the applicant and/or the unborn child may experience in Indonesia to support the assertion that the applicant's spouse will experience hardship were he to relocate abroad. It has thus not been established that the applicant's spouse would suffer exeptional hardship were he to relocate abroad to reside with the applicant due to her two-year foreign residency requirement.

With respect to remaining in the United States while the applicant relocates abroad for a two-year period, the applicant's spouse first explains that his wife is his rock and he cannot live with her and being apart from her will be impossible for him. Furthermore, the applicant's spouse contends that he needs his wife's financial support and were she to relocate abroad, he would experience hardship. *Supra* at 1.

To begin, no supporting documentation has been provided establishing the emotional hardship the applicant's spouse states he would experience were the applicant to relocate abroad for a two-year period while he remains in the United States. Nor does the record indicate that the applicant's spouse would be unable to travel to Indonesia to visit the applicant during her two-year absence. As for the financial hardship referenced by the applicant's spouse, counsel has failed to provide any financial documentation on appeal outlining the applicant and her spouse's current income and expenses and assets and liabilities to establish that without the applicant's physical presence in the United States, the applicant's spouse will experience financial hardship. In addition, as noted above, no documentation has been provided that establishes that the applicant would be unable to obtain gainful employment in [redacted] thereby assisting in the U.S. household's finances. 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 adjustments with respect to the maintenance of the household and his own care while the applicant resides abroad for two years, it has not been shown that such adjustments would cause the applicant's spouse exceptional hardship. The applicant's spouse's hardship, if he remained in the United States for two years without the applicant, does not go beyond that normally suffered upon the temporary separation of a husband from his wife.

The AAO finds that the applicant has failed to establish that her U.S. citizen spouse would suffer exceptional hardship if he relocated to [redacted] with the applicant for the requisite two-year period and in the alternative, were he to remain in the United States while the applicant returned to [redacted] for a two-year period. As such, 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 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 her burden. Accordingly, the appeal will be dismissed.

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