

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**



(b)(6)

Date: **APR 02 2014** Office: CALIFORNIA SERVICE CENTER

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
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 Tanzania who was admitted to the United States in J-1 nonimmigrant exchange status in August 2008. 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 the Exchange Visitor Skills List. 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 Tanzania temporarily with the applicant and in the alternative, if she remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Tanzania.

The director determined that the applicant failed to establish that his spouse would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Tanzania. *Director's Decision*, dated October 31, 2013. The application was denied accordingly.

In support of the appeal, counsel submits a brief. 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 U.S. citizen spouse would experience exceptional hardship if she resided in Tanzania for two years with the applicant. In a declaration, the applicant's spouse states that she has a full-time job in the United States and it would be a hardship to accompany her husband abroad. *See Affidavit from* ( ) dated September 4, 2013. Counsel further references the safety concerns in Tanzania, noting bombings and terrorist attacks in Tanzania. *See Brief in Support of Appeal*, dated November 22, 2013.

Counsel has not provided any supporting documentation to establish that the applicant's spouse would be in danger in Tanzania. 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 noted by the U.S. Department of State, Tanzania is a developing East African nation noted for its history of stability and natural beauty, with a robust tourism industry providing all levels of tourist amenities. *See Country Information-Tanzania, U.S. Department of State*, dated September 30, 2013. Nor has the applicant's spouse established that relocating to Tanzania and leaving her gainful employment would cause her exceptional hardship. 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 applicant has thus failed to establish that his spouse would experience exceptional hardship were she to relocate to Tanzania for a two-year period.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would suffer exceptional hardship if she remained in the United States during the two-year period that the applicant resides in Tanzania. The applicant's spouse contends that the applicant accounts for 50 percent of the household income and the loss of his income would cause her economic hardship and instability. *Supra* at 1.

The applicant has not provided any current financial documentation outlining the applicant's income and the household's 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 or emotional hardship. The record establishes that the applicant's spouse earned over \$25,000 in 2011. In addition, the applicant has not established that he would be unable to obtain gainful employment in Tanzania, thereby assisting in the U.S. household's finances. As noted above, assertions without

supporting documentation do not suffice to establish exceptional hardship. As such, it has not been established that the applicant's spouse would suffer exceptional hardship were she to remain in the United States while her spouse relocates to Tanzania to fulfill his two-year foreign residency requirement.

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. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.