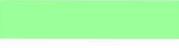
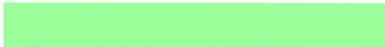




(b)(6)



Date: **AUG 25 2014** Office: CALIFORNIA SERVICE CENTER FILE: 

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 on February 9, 2000. 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 government financing. The applicant presently seeks a waiver of his two year foreign residence requirement based on the claim that his U.S. citizen spouse or either one of his children would suffer exceptional hardship if they moved to Tanzania 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 Tanzania.

The director determined that the applicant failed to establish that his spouse or children 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. In the brief, counsel contends that the applicant's spouse and children would experience health-related hardships, and that the children would be taken away from necessary educational facilities if they relocated to Tanzania. Counsel also asserts that the spouse would experience emotional and financial difficulties if she and the applicant were separated, and that the children's education would suffer if the applicant returned to Tanzania without them. The record includes, but is not limited to: statements from the applicant and his spouse; articles on medical conditions, healthcare, and country conditions in Tanzania; medical, employment, and educational records; letters from health care providers and school representatives; evidence of birth, marriage, divorce, and citizenship; financial documents; other applications and petitions; and photographs. 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(I): 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 or either of his children would experience exceptional hardship if they resided in Tanzania for two years with the applicant. In a declaration, the applicant’s spouse states that she and the applicant were initially married in Tanzania in 1991, they subsequently came to the United States, but that they divorced, she married another man and brought her children to the United States, and that she and the applicant remarried in 2009. The spouse claims the two children, now 18 and 19 years old, were having difficulties adjusting to a new culture and school in the United States, and that they were eventually diagnosed with learning disorders. The spouse contends that after she and the applicant resumed their relationship, he became a more positive influence on the children, who needed his personal and educational guidance. With respect to the elder son’s learning disabilities, the Director of Disability Services for the community college indicates in a letter that he struggles with information processing weaknesses, and that he is specifically weak in reading comprehension, math, listening comprehension, processing, reasoning speed, and working memory. The Disability Services Director opines that having the applicant as a strong, involved, and caring male in the son’s life is essential for the son’s success. She also notes that the son has been taking English as a Second Language classes as well as career-oriented college courses. A high school representative discusses the younger son’s educational difficulties in another letter. Therein, the representative states that the applicant has attended all meetings related to his son’s educational progress. She further indicates that the son is on an Individual Education Plan (“IEP”), because he was diagnosed with ADHD. Educational records are present in the record.

The spouse adds that without the applicant’s income in the United States, she will be unable to meet her financial obligations, and to pay for their children’s education. The applicant provided in response to a 2012 Request for Evidence (“RFE”) a summary of monthly bills, letters verifying employment and hourly wages, 2012 paystubs, a copy of the couple’s joint U.S. federal income tax return, and documents related to the spouse’s 2011 bankruptcy filings. The applicant attests that he

will be unable to earn sufficient income in Tanzania to help support himself and his family. In addition, counsel states that the spouse would be worried about the applicant's health, given his medical conditions. The applicant's primary care physician indicates in an undated letter that the applicant has a history of hypertension, hyperlipidemia, abnormal dilation of aorta, hypogonadism, and a few other medical problems. The physician reports that the applicant needs frequent visits and monitoring, and that his health may be jeopardized if he travels or lives in Africa where healthcare is substandard.

The applicant has not provided sufficient evidence to show that his spouse or either of his children will experience exceptional hardship without him present for a two year period. Although a list of household expenses was submitted in 2012, the applicant has not provided copies of corresponding or updated billing statements in support. Nor is it clear from the record that the spouse's income would not be enough to meet her expenses. In addition, the applicant has not provided evidence to show that he cannot earn a sufficient income in Tanzania, given his background and skills, to help his spouse and children financially. Although these assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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 shown that he is involved in his children's lives, and that he has provided support for his children's educational needs. The applicant has also demonstrated that his spouse and children, now 18 and 19 years old, would experience some emotional difficulties without him present for the two year residency requirement. However, there is not enough evidence of record to demonstrate that the spouse or either child would experience exceptional hardship in the event they were separated for a two year period.

The second step required to obtain a waiver is to demonstrate that the applicant's spouse or children would experience exceptional hardship in the event of relocation to Tanzania for the two year residency requirement. Counsel contends in the June 2012 RFE response that, if the family relocates to Tanzania for the two-year foreign residency requirement, the spouse and children will be subject to medical difficulties, given the poor health care available in that country. In a June 2012 letter, the spouse's physician states that the spouse has a history of allergic dermatitis, hyperlipidemia, a vitamin D deficiency, positive ANA, and mesenteric lymphadenopathy. The physician adds that the spouse takes multiple medications, and that she needs periodic evaluation and close monitoring for her positive ANA and mesenteric lymphadenopathy. Medical records are present in the record. In a January 14, 2014, response to a later RFE, counsel contends the applicant's elder son was diagnosed with salivary gland neoplasm in 2010, and that a benign tumor was successfully surgically removed. In addition, counsel states that the younger son was diagnosed with and treated for latent tuberculosis in 2008, and that he currently suffers from heavy and chronic nosebleeds, rhinitis, and

folliculitis. Medical records are submitted in support. The applicant also claims that the children would receive a substandard education in Tanzania, especially given that inadequate facilities are available to help them with their learning disabilities.

The applicant has submitted insufficient documentation to demonstrate that his spouse and children would experience exceptional hardship upon relocation to Tanzania for a two year period. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which a qualifying relative would relocate, are relevant factors in establishing exceptional hardship. The medical records and letters from medical services providers, however, do not clearly indicate which medical conditions the spouse and children presently have, and whether the remainder of the conditions requires medical treatment which is unavailable in Tanzania. For instance, the spouse's physician states that the spouse has a history of allergic dermatitis and vitamin D deficiency, but the physician does not indicate whether those conditions have been successfully treated or are ongoing. Furthermore, there is no evidence indicating that some of the medical conditions listed, such as folliculitis, are of sufficient severity that they would exacerbate difficulties upon relocation to Tanzania for the two year period.

With respect to the educational difficulties claimed, it is noted that the record reflects the applicant's children previously resided in Tanzania until 2007, and moved to the United States when they were approximately 14 and 15 years old. During this time in Tanzania, a 2010 educational evaluation reveals that the elder son attended formal preschools, a British school, private schools, and a boarding school in Tanzania, and that he received passing grades in all his subjects. The evaluator adds that the elder son reports that he is fluent in both Swahili and English, but that Swahili is easier for him. In light of this information on the elder son's educational background in Tanzania, and on the availability of educational options in Tanzania, the applicant has not demonstrated that sufficient educational facilities to meet his children's needs are unavailable in that country.

The applicant has demonstrated that his spouse and children may experience some difficulties if they temporarily relocate to Tanzania with him to fulfill his two year foreign residency requirement. However, he has submitted insufficient evidence to show that the claimed medical and financial difficulties for his spouse or either of his children rise to the level of exceptional hardship.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen spouse or either of his children 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.