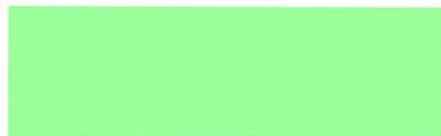


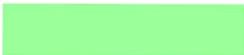
(b)(6)



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**



Date: **JUL 31 2014** OFFICE: CALIFORNIA SERVICE CENTER

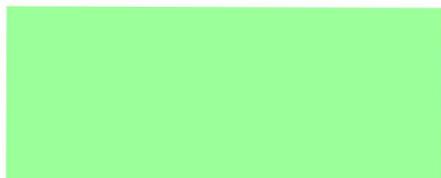
FILE: 

IN RE:

APPLICANT: 

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:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 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 applicant is a citizen of Armenia who was admitted to the United States in J-1 nonimmigrant exchange status in August 1997. 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 seeks a waiver of his two-year foreign residence requirement based on the claim that his U.S. citizen spouse and two U.S. citizen children would suffer exceptional hardship if they moved to Armenia 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 Armenia.

The director concluded while the applicant demonstrated that his spouse and children would experience exceptional hardship upon relocation to Armenia for the two-year period, the applicant had not established that his spouse and children would experience exceptional hardship if they remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Armenia. *Director's Decision*, dated January 7, 2014. The application was accordingly denied.

On appeal, counsel submits a brief in support as well as previously submitted evidence. In the brief, counsel contends that the applicant's spouse, who was granted asylum status based on her fear of persecution should she return to Armenia, suffers from psychological conditions which would be exacerbated if she and the applicant were to be separated. In addition, counsel contends these psychological conditions would in turn have a negative impact on their two U.S. citizen children, born on January 27, 2011, and June 28, 2013.

The record includes, but is not limited to: the documents listed above; evidence of birth, marriage, and citizenship; documentation of the spouse's immigration proceedings; psychological evaluations; U.S. Department of State reports; statements from the applicant and her spouse; an affidavit on country conditions in Armenia; and other applications and petitions. 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, "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 spouse or children would experience exceptional hardship if they relocated to Armenia with the applicant. The director found that the applicant demonstrated such hardship existed based on the persecution the spouse faced in Armenia. As there is no evidence indicating this finding was erroneous, we affirm the director’s finding that the applicant has shown his spouse and children would experience exceptional hardship if they relocated to Armenia with the applicant for the two-year period.

The second step required to obtain a waiver based on hardship is to establish that the applicant’s U.S. citizen spouse or children would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in Armenia. With respect to this criterion, the applicant contends his spouse would suffer adverse psychological consequences upon separation. He explains that his spouse suffers from Post-Traumatic Stress Disorder (“PTSD”) resulting from her persecution in Armenia. The applicant notes that his spouse was granted asylum by an immigration judge on January 28, 2008. A copy of the immigration judge’s order is submitted in support, as well as the spouse’s statement in support of her asylum application. In an assessment, a licensed clinical social worker (“LCSW”) discusses the persecution the applicant’s spouse experienced in Armenia, which includes emotional and physical abuse, arrest, and attacks made on her family members. The LCSW opines that the spouse continues to suffer from PTSD, chronic and compounded, major depressive disorder, and panic disorder with agoraphobia. The LCSW relates that the spouse felt she had to relocate within the United States and leave her job because of these

psychological problems. Furthermore, the LCSW indicates that the spouse's psychological issues have significantly interfered with her and her ability to function socially, professionally, and consistently in her role as a mother, making the applicant the primary caretaker in the family. In conclusion, the LCSW states that due to the spouse's intense social isolation, the applicant has become his spouse's only source of support.

The LCSW further opines that, in light of the spouse's psychological issues, her and the applicant's children, now one and three years old, would also suffer if she were separated from the applicant. In a July 15, 2013, affidavit, a psychologist states that the spouse's PTSD would have a negative impact on her ability to function as a parent to her three year old child and a newborn, as well as her ability to perform head of household duties. The psychologist adds that the spouse's psychological conditions would be further exacerbated due to fear over the applicant's safety in Armenia, the country where she was persecuted. In a letter, a person with expertise in Armenia as well as management and conflict resolution in the former Soviet Union opines that since there is a history of threats to the applicant's family members, as described in his statement, it is not unlikely that his life may be threatened as well, should he return to Armenia. *Letter from expert*, March 25, 2013.

The applicant adds that the spouse would be unable to support herself financially without him, as her psychological conditions have rendered her unable to work. Documentation of the applicant's income is present in the record.

The applicant has submitted sufficient documentation to demonstrate that his spouse, and by extension, his children, would experience exceptional hardship upon separation from the applicant for the two-year foreign residence period. The psychological evaluations establish that the spouse's ability to take care of herself and her two children have been impaired by her PTSD, which was in turn caused by her experiences in Armenia. The evaluations also indicate that the symptoms of her psychological conditions, which include social isolation, nightmares, and hyper-vigilance, would cause difficulties for her children without the applicant's support. Furthermore, the spouse's fear for the applicant's safety in Armenia, especially given her own experiences in that country, has some objective support, as the U.S. Department of State confirms that members of security forces continue to regularly employ torture and other cruel, inhuman, or degrading treatment or punishment. *Country Reports on Human Rights Practices 2013 – Armenia, U.S. Department of State*.

Based on the spouse's psychological conditions, the fears and anxieties referenced by the applicant's spouse were the applicant to return to Armenia, and the resulting impact on their young children, the applicant has established that his spouse and children would experience exceptional hardship were they to remain in the United States while the applicant relocates abroad to fulfill the two-year foreign residency requirement.

Therefore, the AAO concludes the applicant has established that his U.S. citizen spouse and children would experience exceptional hardship were they to relocate to Armenia and in the alternative, were they 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 and children would suffer if

the applicant temporarily departed the U.S. would go significantly beyond that normally suffered upon the temporary separation of families.

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 been met. We note, 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 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 re-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.