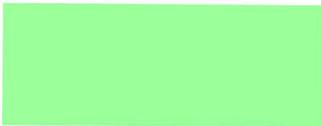




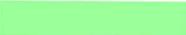
**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **NOV 06 2014**

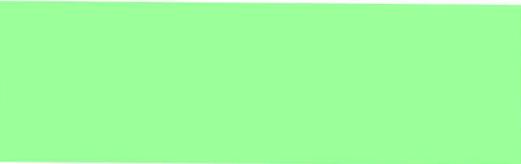
Office: CALIFORNIA SERVICE CENTER

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 that reads "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 The appeal will be dismissed, the prior decision of the director will be withdrawn and the application for a waiver of the two-year foreign residency requirement declared unnecessary.

The applicant is a native and citizen of China who, in January 2006, was admitted to the United States in J-1 nonimmigrant status, as a "Student Secondary" to participate in a high school exchange program. The applicant submitted the Form I-612, Application for Waiver of the Foreign Residence Requirement, noting on Part 4 that she was subject to the foreign residence requirement based on the Exchange Visitor Skills List. The applicant sought 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 China 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 China.

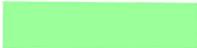
The director found that the applicant as subject to the two-year foreign residence requirement based on the Exchange Visitor Skills List. The director further determined that the applicant failed to establish that her U.S. citizen spouse would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in China. *Director's Decision*, dated May 22, 2014. The application was denied accordingly.

In support of the appeal, counsel for the applicant 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

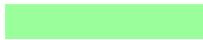


immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of a least two years following 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.

The record establishes that the applicant did not receive government financing to participate in the J-1 program, nor is she subject to the Exchange Visitor Skills List, nor did she enter the United States to participate in graduate medical education or training. As such, based on our review of the record and with the U.S. Department of State's written concurrence, we conclude that the applicant is not subject to the two-year foreign residence requirement under section 212(e) of the Act.

We find that the director erred in finding that the applicant was subject to section 212(e) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established exceptional hardship to a qualifying relative pursuant to section 212(e) of the Act will not be addressed. Accordingly, the appeal will be dismissed, the prior decision of the director is withdrawn and the instant application for a waiver of the two-year foreign residency requirement is declared unnecessary.

(b)(6)



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*NON-PRECEDENT DECISION*

**ORDER:** The appeal is dismissed, the prior decision of the director is withdrawn and the instant application for a waiver of the two-year foreign residency requirement is declared unnecessary.