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: NOV 10 2014 Office: CALIFORNIA SERVICE CENTER FILE:

IN RE:

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,

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 record reflects that the applicant is a native and citizen of Morocco who entered the United States as a J-1 nonimmigrant in September 2004. The applicant 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 and four children[1] would suffer exceptional hardship if they moved to Morocco temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Morocco.

The director determined that the applicant failed to establish that his U.S. citizen spouse and children would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Morocco. *Director's Decision*, dated May 14, 2014. The application was denied accordingly.

In support of the appeal, counsel for the applicant submits the following: a brief, biographic documentation pertaining to the applicant and his family, support letters on behalf of the applicant, medical documentation pertaining to the applicant's spouse and children, financial documentation, and information about country conditions in Morocco. The entire record was reviewed and considered in rendering this decision.

Section 212(e) of the Act states in pertinent part:

> 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

[1] The record establishes that the applicant's two biological children were born in and his two step-children were born in

> (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:

> 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 children would experience exceptional hardship if they resided in Morocco for two years with the applicant. In a declaration, the applicant's spouse first explains that she suffers from depression and fibromyalgia and two of her children have been diagnosed with cystic fibrosis, and were they to relocate abroad, they would experience medical hardship. In addition, the applicant's spouse details that she and her children were born in the United States and they are unfamiliar with the culture and customs in Morocco and long-term separation from their community, their church, their friends, and their extended family would cause them hardship. Further, the applicant's spouse explains that she has a shared custodial arrangement with her ex-husband that requires their two children to remain in the United States. Finally, the applicant references the problematic country conditions in Morocco, including poverty and substandard medical care.[2] The applicant has submitted documentation establishing his family members' medical conditions, the problematic country conditions in Morocco, and the shared custodial agreement between his spouse and her ex-husband. Based on a totality of the circumstances, we concur with the director that the applicant's U.S. citizen spouse and children would experience exceptional hardship were they to accompany the applicant to Morocco for a two-year period.

---

[2] The U.S. Department of States references the following regarding medical care in Morocco:

> Adequate medical care is available in Morocco's largest cities, particularly in Rabat and Casablanca, although not all facilities meet Western standards. Specialized care or treatment may not be available. Medical facilities are adequate for non-emergency matters, particularly in the urban areas, but most medical staff will have limited or no English speaking ability. Most ordinary prescription and over-the-counter medicines are widely available. Specialized prescriptions may be difficult to fill and availability of all medicines in rural areas is unreliable.

Country Specific Information-Morocco, U.S. Department of State, dated May 1, 2014.

The second step required to obtain a waiver 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 period the applicant resides in Morocco. The applicant's spouse declares that were the applicant to relocate abroad, she and the children would suffer emotional, medical and financial hardship. To begin, she explains that as a result of her major depression and nerve damage, she has been limited in her ability to keep a job and she thus relies on the applicant to support her and the children. Were the applicant to relocate abroad, she explains that he would not be able to send money to support the family since the average income in Morocco is very low. In addition, the applicant's spouse asserts that she does not drive and relies on the applicant to transport the children to school and to all their medical appointments. *Supra* at 1.

In support, a letter has been provided from the applicant's spouse's ex-husband, detailing the critical role the applicant has played in his children's well-being. He notes that his daughter, has been diagnosed with cystic fibrosis, a disorder that affects the lungs and digestive system. He explains that cystic fibrosis requires extensive medical attention on a daily basis. His daughter is required to take fifteen different medications multiple times daily to maintain a baseline level of health, in addition to constant monitoring and treatment by the specialists familiar with her condition and treatment plan. Mr. maintains that the applicant, along with his ex-wife, play an integral role in his daughter's health and safety and were the applicant to relocate abroad, his daughter would experience exceptional hardship. *See Letter from* dated March 28, 2014. In addition, the applicant has submitted evidence that his son, has also been diagnosed with cystic fibrosis. *See After Visit Summary,* dated June 10, 2014. Further, the applicant has submitted documentation establishing his gainful employment in the United States.

The record establishes that the applicant's spouse has been diagnosed with major depression, panic disorder and fibromyalgia and is taking medications to treat these conditions. Further, the record establishes that two of the applicant's four children have been diagnosed with cystic fibrosis: the applicant's 9-year old step-daughter and the applicant's six-month old son. Additionally, the record establishes the applicant's role as primary provider to his family. Were the applicant to relocate abroad, his wife would have to become primary caregiver and provider to four children, two with serious medical conditions, while suffering from her own medical and mental health issues. Based on the record, we conclude that the applicant has established that his U.S. citizen spouse and children would experience exceptional hardship if they remained in the United States while the applicant relocated to Morocco to comply with his foreign residency requirement.

The applicant has established that his U.S. citizen spouse and four children would experience exceptional hardship were they to relocate to Morocco 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 would suffer if the applicant temporarily departed the U.S. would go significantly beyond that normally suffered upon the temporary separation of families.

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. We find that in the present case, the applicant has met his burden. The appeal will therefore be sustained. 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 he 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.