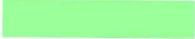


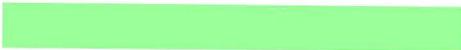


**U.S. Citizenship
and Immigration
Services**

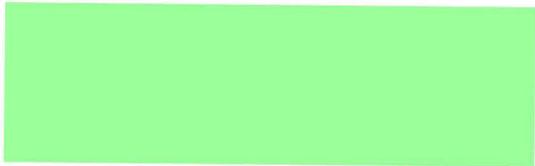
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DATE: **NOV 12 2014** Office: CALIFORNIA SERVICE CENTER FILE: 

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 Rosenber
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 the Dominican Republic who obtained J-1 nonimmigrant exchange status in January 2010. 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 and child, born in November 2013, would suffer exceptional hardship if they moved to the Dominican Republic 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 the Dominican Republic.

The director determined that the applicant failed to establish that a qualifying relative would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in the Dominican Republic. *Director's Decision*, dated June 25, 2014. The application was denied accordingly.

In support of the appeal, counsel for the applicant submits the following: an affidavit from the applicant's spouse; biographic documentation pertaining to the applicant's spouse and child; academic enrollment and financial aid documentation pertaining to the applicant's spouse; documentation establishing that the applicant's spouse was raised in [REDACTED] U.S. Virgin Islands; and evidence of the applicant's spouse's U.S. citizen relatives, including her mother and aunt. 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 or child would experience exceptional hardship if they resided in the Dominican Republic for two years with the applicant. In a declaration, the applicant's spouse explains that although she was born in the Dominican Republic, she spent her entire childhood in [REDACTED] U.S. Virgin Islands, and she is thus unfamiliar with her native country and its culture and customs. The applicant's spouse further contends that her aunt and siblings all reside in the United States and long-term separation from them would cause her hardship. Furthermore, the applicant's spouse details that were she to relocate abroad, she would not be able to continue her college studies because she is unable to read or write fluently in Spanish, and she would be at risk of losing the financial aid that she has secured for the 2014-2015 academic year. Moreover, the applicant's spouse maintains that were she to relocate abroad, she would have to obtain gainful employment to make ends meet but as a result of the high unemployment rate and her inability to read and write fluently in Spanish, she would experience financial hardship. Finally, the applicant's spouse explains that she has a history of mental health issues and were she to relocate abroad, she would not be able to obtain affordable and effective treatment should her mental health condition deteriorate.

Evidence of the applicant's spouse's family ties in the United States has been provided. In addition, documentation establishing that the applicant's spouse was raised in [REDACTED] U.S. Virgin Islands, has been provided. Further, documentation establishing the high unemployment rate in the Dominican Republic has been submitted. In addition, documentation establishing the applicant's spouse's past mental health treatment has been provided. Finally, the applicant's spouse has submitted documentation establishing that she has enrolled at [REDACTED] for the Fall 2014 term to pursue her bachelor's degree, and has obtained financial aid in the amount of \$8,755 for the 2014-2015 academic year. Based on a totality of the circumstances, we conclude that the applicant's U.S. citizen spouse would experience exceptional hardship were she to accompany the applicant to the Dominican Republic for a two-year period.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse or child would suffer exceptional hardship if they remained in the United States during the period the applicant resides in the Dominican Republic. The applicant's spouse declares that were her husband to relocate abroad, she would be forced to become primary caregiver to her young child without the

financial and emotional support of her spouse. The applicant's spouse further contends were her spouse to relocate abroad, she would not have the financial and emotional resources to complete her coursework, thereby causing her significant academic disruption. Finally, the applicant's spouse maintains that she would not be able to afford to travel to the Dominican Republic to visit her husband.

Evidence of the applicant's employment has been provided, establishing the applicant's contributions to the finances of the household as a Computer Technician, and further corroborating the applicant's spouse's assertion that without the applicant's income, she will suffer financial hardship. In addition, evidence establishing that the applicant's spouse is currently enrolled in an academic program has been provided. Moreover, extensive documentation with respect to the applicant and his spouse's income and expenses has been submitted, including a detailed Monthly Household Budget, to establish the nature of the applicant's continued financial contributions.

Based on the record, we have determined that the applicant's U.S. citizen spouse would experience exceptional hardship if she remained in the United States while the applicant relocated to the Dominican Republic to comply with his foreign residency requirement. The applicant's spouse would be required to assume the role of primary caregiver and provider to a young child, without her husband's daily presence and support. Moreover, the record indicates that the applicant's spouse is integrated into the U.S. lifestyle and educational system; she is currently completing her degree requirements while relying on the applicant's financial and emotional support. The Board of Immigration Appeals (BIA) found that a U.S. citizen spouse who was in pursuit of an advanced degree and was thus completely dependent on her spouse for support would encounter exceptional hardship if her spouse's waiver request was not granted. *Matter of Chong*, 12 I&N Dec. 793, Interim Decision (BIA 1968). We find *Matter of Chong* to be persuasive in this case due to the similar circumstances. Were the applicant's waiver request denied, his spouse would likely have to cease the pursuit of her studies due to financial hardship and the need to care for her child as a single parent, all without the continued support of her husband. Such a disruption at this stage of her education would be significant as to constitute exceptional hardship.

We thus conclude that the applicant has established that his U.S. citizen spouse would experience exceptional hardship were she to relocate to the Dominican Republic and in the alternative, were she 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.¹

The burden of proving eligibility for a waiver under section 212(e) of the Act rests with the

¹ As we have determined that exceptional hardship exists with respect to the applicant's U.S. citizen spouse were the applicant to relocate to the Dominican Republic for a two-year period, it is not necessary to evaluate whether the applicant's U.S. citizen child would experience exceptional hardship were the applicant to relocate abroad for a two-year period.

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.