



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

(b)(6)

[Redacted]

DATE: **NOV 25 2014**

Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

IN RE: [Redacted]

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).

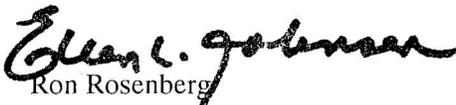
ON BEHALF OF APPLICANT:

[Redacted]

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. The matter 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 Georgia who entered the United States as a J-1 nonimmigrant in April 2001. 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 would suffer exceptional hardship if she moved to Georgia temporarily with the applicant and in the alternative, if she remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Georgia.

The director determined that the applicant failed to establish that his U.S. citizen spouse would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Georgia. *Director's Decision*, dated May 14, 2014. The application was denied accordingly. On July 25, 2014, the director affirmed the decision to deny the application. *Director's Decision*, dated July 25, 2014.

In support of the appeal, counsel for the applicant submits the following: a brief, affidavits from the applicant and his spouse, biographic documents pertaining to the applicant and his spouse, medial documentation pertaining to the applicant's spouse, financial documentation, and letters in support. 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
- (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 would experience exceptional hardship if she resided in Georgia for two years with the applicant. On motion, the director determined that due to inadequate medical facilities, the problematic safety and security situation in Georgia, and the applicant's spouse's long-term ties to the United States, the applicant had established that his U.S. citizen spouse would experience exceptional hardship were she to relocate to Georgia to reside with the applicant for a two-year period. As the record does not show the finding to be in error, we will not disturb this finding on appeal.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would suffer exceptional hardship if she remained in the United States during the period the applicant resides in Georgia. In a declaration, the applicant's spouse maintains that were the applicant to relocate abroad, she would suffer emotional, medical and financial hardship. The applicant's spouse explains that as a result of her severe depression and panic attacks she has been limited in her ability to keep a job and she thus relies on the applicant to support her. She maintains that he pays for all of her therapy sessions, her treatments, and the related medical expenses because her basic insurance coverage does not cover mental health specialists and many of the medications she has been prescribed. The applicant's spouse further contends that as a result of her recent mental stress at the thought that her husband may relocate abroad, she has been experiencing many panic attacks and has had to quit one of her part-time jobs.

In support, a psychiatric evaluation has been provided establishing that the applicant's spouse is currently being treated for depression and anxiety. The evaluation further establishes that the applicant's spouse is also suffering from dependent personality disorder, making it difficult for her to make decisions and is fearful of being left alone. The evaluator maintains that the applicant's spouse's fears of separation and abandonment are making it difficult for her to cope, making her more depressed and causing more intensive panic attacks, dizzy spells, crying spells, and phobia. The evaluator confirms that the applicant's spouse supports his wife emotionally and financially since she does not have appropriate medical coverage. The evaluator concludes that were the applicant to relocate abroad, the separation would be detrimental and devastating to the applicant's spouse.

In addition, the applicant has submitted evidence establishing the medications prescribed to the applicant's spouse to treat her mental health conditions. Documentation has also been submitted establishing that the applicant's spouse had to stop working at one of her jobs due to her physical condition. A letter from the applicant's spouse's employer has been submitted to confirm that when the applicant's spouse is experiencing mental disturbances, the applicant is the only who can talk her through her episodes and for this reason, the applicant has been given permission to have his wife accompany him to his worksite. A letter has also been provided from the applicant and his spouse's spiritual leader confirming that the applicant's spouse totally relies on her husband and long-term separation would be catastrophic. Finally, the applicant has submitted financial documentation establishing that he is the primary support for his wife. Based on the record, we conclude that the applicant has established that his U.S. citizen spouse would experience exceptional hardship if she remained in the United States while the applicant relocated to Georgia to comply with his foreign residency requirement.

The applicant has established that his U.S. citizen spouse would experience exceptional hardship were she to relocate to Georgia 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.

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.