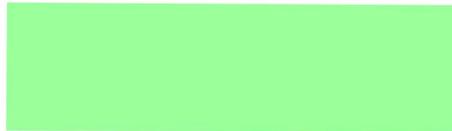




**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **JAN 02 2015**

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Egypt who entered the United States as a J-1 nonimmigrant in August 2009. 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 U.S. 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 Egypt 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 Egypt.

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 Egypt. *Director's Decision*, dated March 28, 2014. The application was denied accordingly.

In support of the appeal, the applicant submits the following: a statement, information about country conditions in Egypt, letters from an advanced registered nurse practitioner and a certified nurse midwife with respect to the applicant's spouse, and a letter from the U.S. Department of State confirming receipt of a No Objection statement from the applicant's embassy. 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 at 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 would experience exceptional hardship if she resided in Egypt for two years with the applicant. The director determined that due to the problematic security and economic situation in Egypt and the applicant's spouse's unfamiliarity with the country, culture, customs and language in Egypt, the applicant had established that his U.S. citizen spouse would experience exceptional hardship were she to relocate to Egypt 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 Egypt. In a declaration, the applicant maintains that were he to relocate abroad, his spouse would suffer emotional, medical and financial hardship. The applicant explains that his wife is being treated for infertility and were he to relocate abroad, the treatments would not be able to continue, thereby causing his wife depression and post-traumatic stress disorder. In addition, the applicant states that his wife is unable to work due to medical issues and she is completely reliant on him financially and were he to relocate abroad, he would not be able to obtain gainful employment in Egypt that would permit him to support his wife in the United States. The applicant also asserts that his wife will not be able to travel to visit him in Egypt due to pain associated with a chronic medical condition, thereby worsening the emotional hardship she would experience due to separation from him.

In support, the applicant has submitted a letter from an advanced registered nurse practitioner explaining that the applicant's spouse suffers from chronic degeneration of her right knee due to her complications with Rickett's as a child and is unable to sit for long periods of time. The documentation does not establish the specific hardships the applicant's spouse would experience were she to travel to Egypt to visit her husband. In addition, although the applicant's spouse's certified nurse midwife asserts that the applicant's spouse is suffering from anxiety and depression while undergoing infertility treatment, the nature and severity of her conditions have not been

detailed by the applicant's spouse's treating physician and/or mental health professional. The record thus fails to establish what impact the applicant's medical conditions have on her daily life and well-being.

Further, the applicant has not submitted documentation to establish that he specifically will be unable to obtain gainful employment in Egypt that would permit him to assist his wife in the United States. The documentation submitted regarding the unemployment rate in Egypt is general in nature. Alternatively, the applicant has not submitted documentation from the applicant's spouse's treating physician establishing that she is unable to work and support herself as a result of her medical condition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Based on the record, we conclude that the applicant has not established that his U.S. citizen spouse would experience exceptional hardship if she remained in the United States while the applicant relocated to Egypt to comply with his foreign residency requirement.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face exceptional hardship if the applicant's waiver request is denied. While we find that the applicant has established that his spouse would suffer exceptional hardship were she to relocate to Egypt to reside with the applicant for a two-year period, we conclude that the applicant has failed to establish that his spouse would suffer exceptional hardship if she remained in the United States while the applicant relocates abroad for the requisite two-year term.

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 not met this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.