

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**

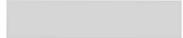


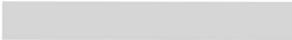
(b)(6)



Date: **MAY 18 2015**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: 

APPLICATION: Application for Waiver of 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 Director, California Service Center denied the Form I-612, Application for Waiver of the Foreign Residence Requirement (Form I-612) and it 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 Kenya who obtained J-1 nonimmigrant exchange status in September 2003. 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 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 Kenya temporarily with the applicant and in the alternative, if she remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Kenya.

The director determined that the evidence submitted by the applicant appeared to establish exceptional hardship. Nevertheless, the director concluded that as a result of derogatory information in the record, 1) the applicant had not established that his U.S. citizen spouse would experience exceptional hardship were he to fulfill his two-year foreign residence requirement in Kenya and 2) the applicant never intended to establish a life with his U.S. citizen spouse and thus, the marriage between the applicant and his spouse was not valid for immigration purposes. The application was denied accordingly.

On appeal, the applicant maintains that he remains eligible for a waiver as the allegations raised by the director are incorrect. In support, 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:

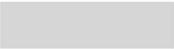
No person admitted under section 101(a)(15)(J) or acquiring such status after admission

- (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 subsequent to filing the Form I-612, the applicant's U.S. citizen wife, the only qualifying relative in this case, submitted a letter to the U.S. Citizenship and Immigration Services (USCIS) requesting that the Form I-130, Petition for Alien Relative, submitted by her on behalf of the applicant, and approved by the USCIS, be withdrawn. The Form I-130 was automatically revoked upon written notice of the applicant's spouse's withdrawal on June 27, 2014.

The purpose of the Form I-130 petition is to establish for immigration purposes the validity of the marriage relationship between the applicant and his spouse. As the applicant's spouse has provided written notice of her withdrawal of the I-130 filed on behalf of the applicant, it appears that his



spouse is no longer interested in pursuing a relationship with the applicant and, therefore, he cannot establish hardship to her if the waiver is denied. On appeal the applicant indicates that they were trying to work things out, but, he provided nothing from his spouse to support this statement. In addition, as the USCIS has revoked the Form I-130 approval, the applicant is not entitled to apply for adjustment of status so no purpose would be served in approving the waiver.

The applicant has not thus established that he is eligible for a waiver pursuant to section 212(e) of the Act based on exceptional hardship to his U.S. citizen spouse.

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 his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.