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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-U-L-

DATE: SEPT. 28, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

APPLICATION: FORM I-612, APPLICATION FOR WAIVER OF THE FOREIGN RESIDENCE REQUIREMENT (UNDER SECTION 212(E) OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED)

The Applicant, a native and citizen of South Korea, seeks a waiver of the foreign residence requirement. *See* Immigration and Nationality Act (INA, or the Act) § 212(e), 8 U.S.C. § 1182(e). The Director, California Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant, a native and citizen of South Korea, seeks a waiver of the foreign residence requirement. *See* Immigration and Nationality Act (INA, or the Act) § 212(e), 8 U.S.C. § 1182(e). The Director, California Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record establishes that the Applicant was admitted to the United States in J-2 nonimmigrant status as the dependent spouse of a J-1 visa holder, subject to the two-year foreign residence requirement under section 212(e) of the Act based on the Exchange Visitor Skills List. As a result of the [REDACTED] divorce of the Applicant from the J-1 visa holder, the Applicant independently seeks a waiver of her two-year foreign residence requirement. She requests the waiver based on the claim that her U.S. citizen sons, born in [REDACTED] and [REDACTED] would suffer exceptional hardship if they moved to South Korea temporarily with the Applicant and in the alternative, if they remained in the United States while the Applicant fulfilled her two-year foreign residence requirement in South Korea.

The director concluded that exceptional hardship to a qualifying relative had not been established. The Form I-612 was denied accordingly.

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.

Section 212(e) of the Act states, in pertinent part, that a person admitted under section 101(a)(15)(J) is subject to the two-year foreign residence requirement. Section 101(a)(15)(J) of the Act specifically references the principal and the spouse and minor children accompanying or following to join. As such, pursuant to the Act, irrespective of the fact that the Applicant may have divorced the J-1 principal, the Applicant remains subject to section 212(e) of the Act.

The U.S. Department of State (DOS) confirms that a J-2 nonimmigrant is subject to the same requirements as a J-1. More importantly, the DOS indicates that J-2s cannot independently apply for a waiver, and in cases of death or divorce from the J-1, or when a J-2 child reaches age 21, the Waiver Review Division may consider requests for waivers on behalf of the J-2 on a limited case-by-case basis. The exceptions where the DOS Waiver Review Division will consider requests for waiver recommendations from J-2 spouses and children include when the J-1 spouse dies, when the J-1 and J-2 spouses divorce, and when a J-2 child reaches age 21. *See Frequently Asked Questions: Waiver of the Exchange Visitor Two-Year Home-Country Physical Presence Requirement, U.S. Department of State*, <http://travel.state.gov/content/visas/english/study-exchange/student/residency-waiver/ds-3035-faqs.html>.

The Applicant's options to fulfill the requirements as set forth under section 212(e) of the Act are to: 1) return to her home country for a two-year period or 2) obtain an interested government agency recommendation from the U.S. Department of State.¹ The Applicant has not established that the U.S. Department of State has recommended a waiver on her behalf as an Interested Government Agency. As such, USCIS may not approve the Form I-612 based on her independent request for a waiver due to exceptional hardship to her U.S. citizen children. The Applicant's appeal must be dismissed due to lack of jurisdiction over a J-2 nonimmigrant's independent request for a waiver.

ORDER: The appeal is dismissed.

Cite as *Matter of J-U-L-*, ID# 14006 (AAO Sept. 28, 2015)

¹ According to the U.S. Department of State:

All such cases are evaluated by the Waiver Review Division on a case-by-case basis.

If you, as a J-2 spouse or child, believe that your situation merits special consideration based on one of the exceptions above, you should complete online form DS-3035, pay the processing fee (Steps 1 and 2 of the Instructions), and submit a statement explaining why you are applying for a waiver and your J-1 spouse or parent is not.

See Frequently Asked Questions: Waiver of the Exchange Visitor Two-Year Home-Country Physical Presence Requirement, U.S. Department of State, at <http://travel.state.gov/content/visas/english/study-exchange/student/residency-waiver/ds-3035-faqs.html>