



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

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

MATTER OF R-C-

DATE: FEB. 9, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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 China, seeks a waiver of the foreign residence requirement. *See* Immigration and Nationality Act (the Act) § 212(e), 8 U.S.C. § 1182(e). The Director, California Service Center, denied the application, and we dismissed the subsequent appeal. The matter is now before us on a motion to reconsider. The motion will be denied.

In a decision issued on November 8, 2014, the Director found the Applicant, although never married to the J-1 visa holder, was admitted into the United States using the J-2 visa, and was thus subject to the two-year foreign residence requirement. The Director further noted that U.S. Department of State (DOS) regulations dictate that a J-2 visa holder cannot independently apply for a waiver of the two-year foreign residence requirement. The Director denied the Form I-612, Application for Waiver of the Foreign Residence Requirement, accordingly.

On appeal, we determined that the Applicant was subject to the two-year foreign residence requirement even though the J-2 visa was obtained by fraud. Furthermore, we noted that the Applicant cannot independently apply for a waiver because of her J-2 status and that in certain cases, the DOS Waiver Review Division may consider requests for waivers on behalf of the J-2 on a limited case-by-case basis. We dismissed the appeal accordingly.

On motion, the Applicant submits a brief asserting that she should be able to independently file the Form I-612 because her circumstances are factually similar to the exceptions made for death or divorce. The Applicant indicates that she was approved for a Form I-601, Application for Waiver of Grounds of Inadmissibility, in relation to the fraudulently obtained visa on the grounds that her actual U.S. citizen spouse (i.e., not the J-1 visa holder) would suffer extreme hardship if she were not allowed to remain in the United States. She asserts that, because her absence would cause extreme hardship to her spouse, and because she would be in danger of persecution in China on account of her religious beliefs, she should be eligible to file a Form I-612 independently.

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(I): 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

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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.

As noted in our decision dismissing the appeal, and referenced above, U.S. Citizenship and Immigration Services (USCIS) cannot review the Applicant's independently filed Form I-612. Only the DOS Waiver Review Division will consider such requests. The Applicant has the following options to fulfill the requirements as set forth under section 212(e) of the Act: 1) return to her home country for a two-year period or 2) obtain an interested government agency recommendation from the DOS. On motion, the Applicant has not established that the DOS has recommended a waiver on her behalf as an Interested Government Agency. As such, the USCIS is prohibited from approving the Form I-612 based on her independent request for a waiver.

The Applicant has the burden of proving eligibility for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we deny the motion to reconsider.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of R-C-*, ID# 15498 (AAO Feb. 9, 2016)