

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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**



PUBLIC COPY

H7.

[Redacted]

Date: **MAR 30 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

IN RE: [Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-612, Application for Waiver of the Foreign Residence Requirement (Form I-612) was denied by the Director, California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant is a native and citizen of Vietnam who was admitted to the United States in J-2 nonimmigrant status, as the derivative spouse of [REDACTED] (who she divorced in 2009), a J-1 visa holder. Notations made by the U.S. Embassy in Hanoi, Vietnam establish that 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). The applicant presently seeks a waiver of her two-year foreign residence requirement, based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to Vietnam temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled her two-year foreign residence requirement in Vietnam.

The director noted that U.S. Department of State (DOS) regulations dictate that a J-2 applicant cannot independently apply for a waiver of the two-year foreign residence requirement. The director concluded that since the DOS regulations dictate that a J-2 cannot independently apply for a waiver of the two-year foreign residence requirement, the Form I-612 must be denied. *Director's Decision*, dated November 1, 2011. The Form I-612 was denied accordingly.

On appeal, counsel for the applicant asserts that as a result of the divorce, the applicant has no access to the necessary documents to file a request with the U.S. Department of State to act as an Interested Government Agency on her behalf. Counsel further maintains that the applicant did not rely on her J-2 visa to re-enter the United States in 2009. Finally, counsel contends that Vietnam is currently not listed on the U.S. Department of State's Exchange Visitor Skills List and as such, the applicant is not required to return to her home country for a two-year period. *See Form I-290B and Attachment*, dated November 29, 2011.

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 U.S. Department of State, on its website, confirms that an individual admitted as a J-2 is subject to the same requirements as a J-1. Furthermore, the DOS states 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. See *Frequently Asked Questions, travel.state.gov, U.S. Department of State*.

With respect to counsel's assertion that the applicant does not have access to the necessary documentation to file a request with the U.S. Department of State to act as an Interested Government Agency, said predicament is one that needs to be addressed with the U.S. Department of State

directly. As previously noted, USCIS does not have the authority to adjudicate waiver requests filed independently by J-2s. Further, despite the fact that the applicant may have re-entered the United States on an F-1 student visa in 2010, Section 212(e) of the Act references that any alien admitted under section 101(a)(15)(J) of the Act is subject to the two-year foreign residence requirement. Nothing in the Act establishes that re-entry to the United States under a different visa category excuses the two-year foreign residence requirement attached to the J visa issued to the applicant. Finally, no documentation has been provided by counsel establishing that the applicant's former husband entered the United States with a J-1 Visa subject to the Exchange Visitor Skills List, to support counsel's assertion that the applicant is no longer subject to the two-year foreign residence requirement based on Vietnam's removal from said list. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As noted by the director and corroborated by the U.S. Department of State in writing, 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 failed to establish that she returned to her home country for two years. Nor has she established that the U.S. Department of State 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 the applicant's independent request for a waiver due to exceptional hardship to a U.S. citizen. The AAO thus concludes that director properly denied the applicant's Form I-612, due to lack of jurisdiction over a J-2's independent request for a waiver.

ORDER: The appeal is dismissed. The waiver application is denied.

¹ As stated by the U.S. Department of State,

If the J-2 feels that his/her case merits special consideration by the Waiver Review Division, he/she will need to complete Form 3035 on-line, pay the processing fee, and submit the appropriate statements of reason. The Division will also need the J-1's DS-2019/IAP-66 forms and divorce decree or death certificate, whichever is applicable.