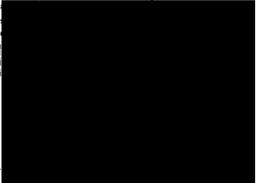




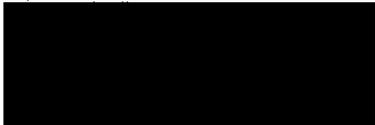
U.S. Department of Justice

Immigration and Naturalization Service



OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D. C. 20536

H3



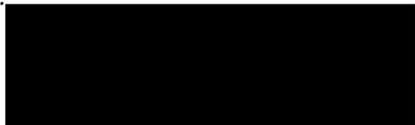
FILE: [Redacted] Office: Vermont Service Center

Date: SEP 29 2000

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of the Foreign Residence Requirement under § 212(e) of the Immigration and Nationality Act, 8 U.S.C. 1182(e)

IN BEHALF OF APPLICANT:



Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrence M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. That decision was withdrawn by the Associate Commissioner for Examinations on appeal and was remanded to the director for further action and the entry of a new decision. The director denied the application again and certified that decision to the Associate Commissioner for review. The director's decision will be affirmed.

The applicant is a native and citizen of Pakistan who is subject to the two-year foreign residence requirement of § 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(e), because she participated in graduate medical education or training. She is also subject to the two-year foreign residence requirement because the Director, United States Information Agency (USIA), has designated Pakistan as clearly requiring the services of persons with the applicant's specialized knowledge or skill. The applicant was admitted to the United States as a nonimmigrant exchange visitor in July 1995. The applicant is married to a native and citizen of Pakistan who is also subject to the two-year foreign residence requirement and they have a United States citizen child born on March 4, 1998. The applicant seeks the above waiver after alleging that her departure from the United States would impose exceptional hardship on her U.S. citizen child.

On September 15, 1999, the director determined that the record failed to establish that the applicant's departure from the United States would impose exceptional hardship upon her child and denied the application accordingly.

On October 8, 1999, the applicant filed an appeal of that decision based primarily on the fact that her husband, [REDACTED] who is also a physician and subject to the two-year foreign residence requirement, had his application forwarded to the Director, United States Information Agency, USIA, for a recommendation.

The Associate Commissioner, after noting that both applications involved identical hardship risks, withdrew the director's decision on the applicant's application and remanded the case for further action. The Associate Commissioner stated that, if the USIA renders a favorable recommendation on [REDACTED] application then the present application should be forwarded to the USIA for review; however, if the USIA renders an unfavorable recommendation on [REDACTED] application, then the director is to enter a new decision on the present application and certify that decision to the Associate Commissioner for review.

The director provides evidence that USIA recommended on October 28, 1999 that [REDACTED] application be denied because the USIA has determined that the program and policy considerations of the Exchange Visitor's Program outweigh the hardship claimed for the United States citizen child. The director then denied the present application and granted the applicant 30 days in which to respond. Neither counsel nor the applicant has responded.

Section 212(e) EDUCATIONAL VISITOR STATUS; FOREIGN RESIDENCE REQUIREMENT WAIVER.-No person admitted under § 101(a)(15)(J) or acquiring such status after admission-

(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...until it is established that such person has resided and been physically present in the country of his nationality or 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...the Commissioner of Immigration and Naturalization 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)...the Attorney General 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 to be in the public interest....

Matter of Mansour, 11 I&N Dec. 306 (D.D. 1965), held that 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 does not represent exceptional hardship as contemplated by § 212(e) of the Act. See Matter of Bridges, 11 I&N Dec. 506 (D.D. 1965).

Adjudication of a given application for a waiver of the foreign residence requirement is divided into two segments. Consideration must be given to the effects of the requirement if the qualifying spouse and/or child were to accompany the applicant abroad for the stipulated two-year term. Consideration must separately be given to the effects of the requirement should the party or parties choose to remain in the United States while the applicant is abroad.

An applicant must establish that exceptional hardship would be imposed on a citizen or lawful permanent resident spouse or child by the foreign residence requirement in both circumstances and not merely in one or the other. Hardship to the applicant is not a consideration in this matter.

The record reflects that the present applicant has presented identical examples of hardship to her child, political problems in Pakistan, violence, dangers from environmental infrastructure and health-care-system-related problems, as her husband did in his application which was forwarded to the USIA for a recommendation.

Since the USIA recommended that her husband's application be denied, the director's decision to deny the present application based on the same criteria is correct.

In this proceeding, it is the applicant alone who bears the full burden of proving his or her eligibility. Matter of T--S--Y--, 7 I&N Dec. 582 (BIA 1957); Matter of Y--, 7 I&N Dec. 697 (BIA 1958). In this case, the burden of proof has not been met, and the director's decision denying the application will be affirmed.

**ORDER:** The director's decision denying the application is affirmed.