U.S. Department of Justice

Immigration and Naturalization Service

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

FILE: [redacted] Office: El Paso Date: FEB 05 2003

IN RE: Applicant: [redacted]

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

IN BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, El Paso, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Central African Republic who is subject to the two-year foreign residence requirement of section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). The applicant was initially admitted to the United States as a nonimmigrant exchange visitor on January 8, 1989. His application for asylum was denied on December 15, 1994. The applicant married a United States citizen on February 10, 1995. She filed a petition for alien relative in his behalf in January 1997. The applicant seeks the above waiver after alleging that his departure from the United States would impose exceptional hardship on his U.S. citizen spouse and children.

The district director determined that the record failed to establish that the applicant's departure from the United States would impose exceptional hardship upon his spouse and children and denied the application accordingly.

On appeal, counsel discusses the anticipated hardships to the applicant's family if they accompany him abroad, including language, cultural difficulties and their racially integrated family. She also discusses the economic problems that the applicant's wife will face and states that the applicant and his wife have invested in their first home, his wife has student loans to pay and, since the applicant is no longer working, his wife is receiving financial assistance. Counsel further discusses the health problems of the applicant's wife (allergies), the health problems of his child (respiratory treatment), and the health problems and difficulties they will face if they accompany the applicant to his country. She also notes the health problems of the applicant's parents-in-law, who are not qualifying relatives, and hardship to the applicant, which is not a consideration in this matter.

Section 212(e) of the Act provides that no person admitted under section 101(a)(15)(J) of the Act 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 [Waiver Review Board of the United States Department of State (WRB)], 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..., 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 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),....

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.

In determining the merits of an application for a waiver of the foreign residence requirement, we must consider the Congressional intent of the statute. House of Representatives Report No. 721 dated July 17, 1961, prepared by Subcommittee No. 1 of the Committee on the Judiciary, on the "Immigration Aspects of the International Educational Exchange Program" is pertinent. On page 121 of this report, the Subcommittee reiterates and stresses the fundamental significance of a most diligent and stringent enforcement of the foreign residence requirement. The Report states: "It is believed to be detrimental to the purposes of the program and to the national interests of the countries concerned to apply a lenient policy in the adjudication of waivers, including cases where marriage occurring in the United States, or the birth of a child or children, is used to support the contention that the exchange alien's departure from this country would cause personal hardship."

There are no laws that require a United States citizen to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991).In *Matter of Mansour*, 11 I&N Dec. 306 (D.D. 1965), it was 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 section 212(e) of the Act.

Though the family may suffer hardship if the spouse and children relocate to the Central African Republic, the record is devoid of specific documentation which would reflect that the applicant's wife or children would suffer exceptional hardship if she chose to remain in the United States while the applicant temporarily returns to his home country. Her medical problems and those of her children are not severe and are being treated. The emotional and financial problems are usual hardships which might be anticipated during a temporary separation between family members caused by military, business, educational, or other obligations. While certainly inconvenient, such hardship does not rise to the level of "exceptional" as contemplated by Congress.

In this proceeding, it is the applicant alone who bears the full burden of proving his or her eligibility. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

ORDER: The appeal is dismissed.