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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**

Date: **MAY 12 2014**

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: [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)

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

for 
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State (DOS), Waiver Review Division (WRD).

The record reflects that the applicant is a native and citizen of Ukraine who most recently obtained J-1 nonimmigrant exchange status in July 2009. She 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) based on government financing. 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 Ukraine temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Ukraine.

The director determined that the applicant failed to establish that her U.S. citizen spouse would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Ukraine. *Director's Decision*, dated December 6, 2013. The application was denied accordingly.

In support of the appeal, counsel submits the following: a brief; copies of documents previously submitted in support of the instant waiver application; a letter from the applicant and her spouse; copies of referenced AAO decisions; medical and mental health documentation pertaining to the applicant's spouse; and articles regarding the political, economic and social situation Ukraine. In addition, on February 26, 2014, the AAO received supplemental documentation relating to recent developments, including political unrest and violence, in Ukraine. The entire record was reviewed and considered in rendering this decision.

Section 212(e) of the Act states in pertinent part:

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 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.

In *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals stated that, "Therefore, it must first be determined whether or not such hardship would occur as the consequence of her accompanying him abroad, which would be the normal course of action to avoid separation. The mere election by the spouse to remain in the United States, absent such determination, is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed. Further, 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, in and of itself, does not represent exceptional hardship as contemplated by section 212(e), supra."

In *Keh Tong Chen v. Attorney General of the United States*, 546 F. Supp. 1060, 1064 (D.D.C. 1982), the U.S. District Court, District of Columbia stated that:

Courts deciding [section] 212(e) cases have consistently emphasized the Congressional determination that it is 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 his country would cause personal hardship. Courts have effectuated Congressional intent by declining to find exceptional hardship unless the degree of hardship expected was greater than the anxiety, loneliness, and altered financial circumstances ordinarily anticipated from a two-year sojourn abroad." (Quotations and citations omitted).

The first step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would experience exceptional hardship if he resided in Ukraine for two years with the applicant. In a declaration, the applicant's spouse explains that he suffers from a rare genetic disease, Hereditary Hemorrhagic Telangiectasia, or HHT, and he needs to be constantly monitored and treated by physicians familiar with his condition and treatment plan. The applicant's spouse explains that there are only 30 HHT treatment centers worldwide, none in Ukraine. The applicant's spouse further contends that were he to relocate to Ukraine, he would experience professional and career disruption, as he does not speak Ukrainian or Russian and is unfamiliar with the country, culture and customs. The applicant's spouse also maintains that a long-term absence from the U.S. job market would cause him hardship upon his return, as his profession does not favor prolonged absences in the workplace. Moreover, the applicant's spouse details that the applicant has played an integral role in his emotional and physical care and he needs her by his side on a day to day basis. Finally, the applicant's spouse asserts that were she to reside abroad, he would be anxious about her safety and well-being because she is a woman and a journalist critical of the government. *See Affidavit of* [redacted] dated May 29, 2013.

Evidence of the applicant's spouse's medical condition and the need for continued monitoring and treatment has been submitted. In addition, documentation establishing that HHT is quite rare and there are no physicians or centers in Ukraine to treat the condition has also been submitted. Further, the record establishes that the applicant's spouse was born and raised in the United States and has no family or employment ties to Ukraine. In addition, the U.S. Department of State has issued a travel warning urging U.S. citizens to defer non-essential travel to Ukraine due to political instability and the possibility of violence. Counsel has submitted numerous articles regarding political unrest and violent clashes between the Ukrainian government and protestors in Ukraine. Finally, the U.S. Department of State confirms that ill or infirm individuals should not travel to Ukraine. Were the applicant's spouse to relocate abroad, he would be separated from his family, his employment, his community and the physicians familiar with his condition and treatment plan. Further, he would face hardship as he is unfamiliar with the culture, customs and language of Ukraine and would not be able to obtain effective medical care for his condition. Finally, the applicant's spouse would be concerned and anxious regarding his wife's safety in Ukraine. Based on a totality of the

circumstances, the AAO concurs with the director that the applicant's U.S. citizen spouse would experience exceptional hardship were he to accompany the applicant to Ukraine for two years.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would suffer exceptional hardship if he remained in the United States during the period the applicant resides in Ukraine. The applicant's spouse declares that were his spouse to relocate abroad, he would suffer emotional and medical hardship. To begin, he explains that his medical condition will worsen due to the prolonged stress of separation and worries for his wife's safety in Ukraine in light of her journalistic activities and support for the opposition. Moreover, the applicant's spouse maintains that he relies on his wife for emotional support and separation from her would cause him hardship. He notes that his mother died of HHT complications in 2011 and his sister and uncle also have the disease and he is worried and anxious about his own mortality as a result. Finally, the applicant's spouse details that the applicant is a positive influence on his diet, activity, sobriety, and other health-related behavior and without this influence, his general health will suffer and his medical condition will be aggravated. *Supra* at 2, 5-6.

A letter from the applicant's spouse's treating physician, Dr. [REDACTED] details that were the applicant to relocate abroad, her husband would be put under considerable mental duress, which could aggravate HHT symptoms, such as nosebleeds. *See Letter from [REDACTED] M.D. [REDACTED] dated September 26, 2013.* Dr. [REDACTED] a licensed psychologist, echoes Dr. [REDACTED]'s statements. Dr. [REDACTED] maintains that were the applicant's spouse to remain in the United States without his wife, he will experience emotional distress which could exacerbate to a level where he would be in need of professional assistance, and his day-to day functioning could become impaired. *Letter from [REDACTED] Ph.D., Clinical Director, [REDACTED] dated March 12, 2013.* Further, as noted above, the U.S. Department of State has issued a travel warning for Ukraine and counsel has submitted numerous articles relating to violence against journalists, the current political turmoil and threats to freedom of information in Ukraine. Finally, counsel has submitted multiple letters in support from friends, family and colleagues identifying the hardships the applicant's spouse would experience as a result of a two-year separation from his wife. Based on the record, the AAO has determined that the applicant's U.S. citizen spouse would experience exceptional hardship if he remained in the United States while the applicant relocated to Ukraine to comply with her two-year foreign residency requirement.

The AAO thus concludes that the applicant has established that her U.S. citizen spouse would experience exceptional hardship were he to relocate to Ukraine and in the alternative, were he to remain in the United States without the applicant, for the requisite two-year term. The evidence in the record establishes the hardship the applicant's spouse would suffer if the applicant temporarily departed the U.S. would go significantly beyond that normally suffered upon the temporary separation of families.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met. The AAO notes, however, that a waiver under section 212(e) of the Act may not be approved without the

favorable recommendation of the DOS. Accordingly, this matter will be remanded to the director so that he may request a DOS recommendation under 22 C.F.R. § 514. If the DOS recommends that the application be approved, the secretary may waive the two-year foreign residence requirement if admission of the applicant to the United States is found to be in the public interest. However, if the DOS recommends that the application not be approved, the application will be re-denied with no appeal.

ORDER: The matter will be remanded to the Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State, Waiver Review Division.