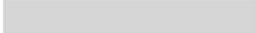




(b)(6)



DATE: **JUL 22 2015**

FILE:   
APPLICATION RECEIPT #: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:  


Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

  
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Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the application. The matter 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 China who was admitted to the United States in J-2 nonimmigrant status, as the dependent of [REDACTED] a J-1 visa holder. The record further establishes that Mr. [REDACTED] was 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 the Exchange Visitor Skills List. The applicant 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 China 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 China. The applicant further contends that she will be persecuted on account of religion were she to return to China for a two-year period.

The director noted that although the applicant never married the J-1 visa holder, she gained admission into the United States using the J-2 visa and is 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 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.

In support of the appeal, the applicant submits a brief; a copy of the Form I-797, Approval Notice for the Form I-601, Application for Waiver of Grounds of Inadmissibility; an affidavit from the applicant; and immigration documents. The entire record was reviewed and considered in rendering this decision.

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.

On appeal, the applicant maintains that as her J-2 visa was fraudulently obtained, the two-year foreign residence requirement does not apply to her. Alternatively, the applicant contends that she should be able to obtain a waiver independently as a result of never having married the J-1 visa holder.

With respect to the applicant's assertion that since her J-2 visa and subsequent entry were based on fraud or willful misrepresentation, the two-year foreign residence does not apply, the Board of Immigration Appeals (BIA) has determined that a person is subject to the two-year foreign residence

requirement even if the J visa was obtained by fraud. *Matter of Park*, 15 I&N Dec. 436 (1975).<sup>1</sup> The applicant thus remains subject to section 212(e) of the Act despite having obtained the J-2 visa by fraud or willful misrepresentation.

Furthermore, with respect to the applicant's contention that she should be able to obtain a waiver independently, 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](http://travel.state.gov), U.S. Department of State.

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 DOS.<sup>2</sup> The applicant has failed to establish 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.

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<sup>1</sup> As stated by the BIA in *Park*,

We construe the language of amended section 212(e) to encompass a person who fraudulently gains admission to the United States or status as an exchange visitor, under section 101(a)(15)(J) with the knowledge that he is being accorded such status. 3 Any other interpretation would permit an alien who has perpetrated a willful fraud to reap the benefit of his own misdeed, and would allow the circumvention of the immigration laws through the exchange visitor program in contravention of the intent of Congress in establishing it. See S. Rept. 1608, 84th Congress, 2d. Sess.

*Id.* at 438.

<sup>2</sup> As stated by the U.S. Department of State,

If you, as a J-2 spouse or child, believe that your situation merits special consideration based on one of the exceptions above, you should complete online form DS-3035, pay the processing fee (Steps 1 and 2 of the Instructions), and submit a statement explaining why you are applying for a waiver and your J-1 spouse or parent is not. Your statement should also explain why your situation merits special consideration. As applicable, you must also submit:

- a copy of your J-1 spouse's death certificate;
- a copy of the divorce decree from your J-1 spouse; or
- a copy of your birth certificate, if you are a J-2 child age 21 or over.

See *Waiver of the Exchange Visitor Two-Year Home Country Physical Presence Requirement-DS-3035: Frequently Asked Questions*, U.S. Department of State.

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*NON-PRECEDENT DECISION*

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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 not been met.

**ORDER:** The appeal will be dismissed.