U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27185984

Date: OCT. 11, 2023

Appeal of California Service Center Decision

Form I-612, Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Immigration and Nationality Act, as Amended)

The Applicant seeks a waiver of the two-year foreign residence requirement for certain J nonimmigrant visa holders. Immigration and Nationality Act (the Act) section 212(e), 8 U.S.C. § 1182(e).

The Director of the California Service Center denied the application, concluding that the record did not establish, as required, that the Applicant's compliance with the two-year foreign residence requirement would result in exceptional hardship to a qualifying relative.

On appeal, the Applicant submits additional evidence and asserts that he has established that his U.S. citizen spouse would experience exceptional hardship were he to comply with the two-year foreign residence requirement.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon review, we will dismiss the appeal.

A noncitizen admitted under section 101(a)(15)(J) of the Act who is subject to a two-year foreign residency requirement is not eligible to apply for an immigrant visa, permanent residence, or an H or L nonimmigrant visa until it is established that the noncitizen has resided and been physically present in the country of his or her nationality or last residence for an aggregate of at least two years following departure from the United States. Section 212(e) of the Act. The statute provides for waiver of this requirement, however, when it is determined that departure from the United States would impose exceptional hardship upon the noncitizen's U.S. citizen or lawful permanent resident spouse or child, and approval of the waiver is in the public interest. *Id.*

In determining the merits of an application for a waiver of the two-year foreign residence requirement based on exceptional hardship, "it must first be determined whether or not such hardship would occur as the consequence of . . . accompanying the [foreign national] abroad, which would be the normal course of action to avoid separation." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). In addition, "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. . .[because] [t]emporary 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). . . ." *Id.*

In general, we do not apply leniency "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." *Keh Tong Chen v. Attorney General of the United States*, 546 F. Supp. 1060, 1064 (D.D.C. 1982) (quotations and citations omitted). Further, we "[effectuate] 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." *Id.*

The record establishes that the Applicant is subject to the two-year foreign residence requirement under section 212(e) of the Act based on the Exchange Visitors Skills List. As stated above, the Applicant is seeking a waiver of the two-year foreign residence requirement based on the claim that his U.S. citizen spouse would suffer exceptional hardship if he moved to Ecuador 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 Ecuador.

In adjudicating the Applicant's request for a hardship waiver, we will first look to see if the Applicant has established that his spouse would experience exceptional hardship if he remained in the United States while the Applicant relocated abroad for a two-year period. The Director determined that the Applicant had not established that his spouse would experience exceptional hardship upon separation.

On appeal, the Applicant's spouse contends that he will experience emotional and medical hardship were he to remain in the United States while the Applicant relocates abroad for a two-year period. He states that he is 62 years of age and before meeting the Applicant, he lived alone and was unable to visit his ailing father. However, since marrying the Applicant in [redacted] 2022, he has been able to "persevere through this difficult situation." The Applicant's spouse further explains that he has no children or pets or family close by and the Applicant's departure from the United States would affect him psychologically and physically because he would lose the Applicant's daily company. The Applicant's spouse also contends that he suffers from numerous medical conditions, including diabetes, arthritis, panic attacks, and kidney stones, and as a result of the Applicant's daily presence and support, he has been able to maintain a healthy life style and good eating habits and his medical condition is more manageable.

While we acknowledge the statements in the record regarding the difficulties that separation from the Applicant would cause the spouse, as stated above we generally do not apply leniency where marriage occurring in the United States is used to support the contention that the exchange alien's departure from the country would cause personal hardship. Here, the Applicant and his spouse married in 2022, more than four years after the Applicant signed the Form DS-2019 indicating that he was aware of the two-year foreign residence requirement.

Moreover, the evidence in the record does not establish the Applicant's spouse's need for medical treatment or assistance that would require the Applicant's presence specifically in the United States. As noted by the Applicant's spouse's doctor in a March 2023 letter, his diabetes is being managed with

medication. Further, the record indicates that the Applicant's spouse is gainfully employed and the record does not demonstrate that separation would affect his spouse's current ability to care for himself to such an extent that it would cause him exceptional hardship. The record also does not establish that the Applicant's spouse would not be able to travel to visit the Applicant while he fulfills the two-year foreign residence requirement abroad.

For these reasons, we find that the record does not establish that the claimed hardships, considered individually and in their totality, would rise beyond the common results of a two-year separation. According, the Applicant's waiver application will remain denied.

ORDER: The appeal is dismissed.