U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20755243

Date: APR. 4, 2022

Appeal of California Service Center Decision

Form I-612, Application to Waive Foreign Residency Requirement

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 she has established that her spouse would experience exceptional hardship were she to comply with the two-year foreign residence requirement.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

No foreign national admitted under section 101(a)(15)(J) of the Act who is subject to a two-year foreign residency requirement is eligible to apply for an immigrant visa, permanent residence, or an H or L nonimmigrant visa until it is established that the foreign national 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 foreign national'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.*

II. ANALYSIS

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 her U.S. citizen spouse would suffer exceptional hardship if he moved to the Philippines 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 the Philippines.

In adjudicating the Applicant's request for a hardship waiver, we will first look to see if the Applicant has established that her 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 her spouse would experience exceptional hardship upon separation. The Director found that the emotional and financial hardships from separation constituted the usual hardships that would be anticipated rather than the exceptional hardship such as contemplated under section 212(e) of the Act. Upon consideration of the entire record, including the arguments made on appeal, we adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994)); *see also Chen v. INS, 87 F.3d 5, 7-8* (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

The Applicant has not submitted any documentation on appeal that sufficiently addresses or overcomes the deficiencies discussed in the Director's decision. While we acknowledge the statements in the record regarding the emotional 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 her spouse married in 2020, years after she signed the Form DS-2019 indicating that she was aware of the two-year foreign residence requirement. Furthermore, as detailed by the Applicant on appeal, her spouse is of "sound mental health." The record does not establish the severity of the emotional hardships or the impact of the hardships in the Applicant's

spouse's daily life, if any, were the Applicant to relocate abroad temporarily to fulfill the two-year foreign residence requirement.

Regarding financial hardship, while we acknowledge that the Applicant's spouse lost his job on July 31, 2020, and as a result was receiving temporary unemployment benefits until September 2021, the record establishes that prior to moving to California with the Applicant, the Applicant's spouse had a "great paying job with benefits" in Wisconsin that was "financially stable," as noted in the Applicant's sister-in-law's November 14, 2021, letter. The Applicant has not established that her spouse is unable to work, or with some adjustments, be able to provide for himself. While the Applicant's spouse may experience some financial hardship during the Applicant's absence, the Applicant has not established on appeal that separation would affect her spouse's current ability to meet his responsibilities to such an extent that it would cause him exceptional hardship. Alternatively, the Applicant has not established that she will not be able to obtain gainful employment abroad and assist in her spouse's support as needed; general articles about country conditions do not suffice to establish that the Applicant specifically will not be able to obtain gainful employment 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.