U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23214136

Date: Dec. 15, 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 demonstrated exceptional hardship to her U.S. citizen spouse.

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 de novo 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 [noncitizen] 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. 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. On appeal, we adopt and affirm the Director's decision with the comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

In adjudicating the Applicant's request for a hardship waiver, we first look to see if the Applicant has established that her spouse would experience exceptional hardship if he resided in the Philippines for two years with the Applicant. In the decision to deny the application, the Director determined that "[b]ased on the evidence submitted, [the Applicant's] spouse does not speak the native language and could face discrimination in the Philippines, which could impose a safety hardship for [the Applicant's] spouse." We concur with the Director's determination that exceptional hardship to the Applicant's spouse on relocation has been established. [1]

Regarding separation, the Director determined that the record did not establish that the Applicant's spouse's mental or medical conditions would be exacerbated to the level of exceptional hardship were the Applicant to relocate abroad, or that the temporary financial difficulties or debt caused by the Applicant's departure would result in exceptional hardship. On appeal, the Applicant asserts that she is the primary financial provider for the family but were she to relocate abroad, the loss of her income and the cost of maintaining two households, one in the United States and one in the Philippines, will cause financial hardship to her spouse. Regarding emotional hardship, the Applicant's spouse maintains that were he to be separated from his wife, he would not be a productive member of society and would lose all motivation.

On appeal, the Applicant has not sufficiently addressed or overcome the deficiencies discussed in the Director's decision regarding separation. We acknowledge the Applicant's spouse's statements, the submitted medical records, and the December 2021 clinical evaluation regarding the emotional and

[1] We also acknowledge that the Applicant's spouse was born and raised in the United States; he has extensive community and family ties in the United States, including his parents and siblings. The record also indicates that the Applicant's spouse is unfamiliar with the culture, customs, and language in the Philippines and has never visited. The Applicant's spouse also contends that were he to relocate to the Philippines, he would not be able to support himself financially, his medical and mental health would suffer due to lack of effective and affordable health services, and he would be concerned about his safety and well-being.

medical hardship that a separation would cause the Applicant's spouse. However, the Applicant has not submitted any documentation on appeal, such as updated medical or mental health documentation, to establish her spouse's current health conditions; what, if any, limitations exist with respect to his ability to care for himself; and what hardships he would experience were the Applicant specifically to relocate abroad. We note that the record establishes that the Applicant's spouse is able to work; earned a bachelor of science degree in June 2021; is continuing his studies to obtain a teaching license and "enter a teaching certification program"; and has a support network in the United States, including his parents and numerous siblings.

As for the financial hardship referenced, while we recognize that a two-year relocation to the Philippines would have an impact on the Applicant's and her spouse's financial circumstances, the documentation on appeal does not suffice to establish that the Applicant's spouse would not be able support himself and would thus experience financial hardship that rises to the level of exceptional hardship. As we referenced above, the record indicates that the Applicant's spouse recently obtained a college degree, is gainfully employed, and is pursuing studies to be able to teach. Also, the Applicant obtained a master's degree in special education and the record does not establish that she will not be able to obtain gainful employment in the Philippines. Moreover the Applicant's spouse has an extensive support network and it has not ben established that they would not be able to financially assist him should the need arise.

Lastly, 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 visitor's departure from the country would cause personal hardship. Here, the Applicant and her spouse married in [redacted] 2021, after the Applicant was issued the Form DS-2019 and J-1 visa in 2017, indicating that she was aware of the two-year foreign residence requirement.

After reviewing all the evidence in its totality, we conclude that the record contains insufficient evidence to establish that the hardships to the Applicant's spouse upon separation would be exceptional. Accordingly, the Applicant's waiver application will remain denied.

ORDER: The appeal is dismissed.