



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 26244359

Date: JUNE 1, 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 has a U.S. citizen or lawful permanent resident qualifying relative. On appeal, the Applicant submits additional evidence and asserts that she is eligible for the benefit sought by virtue of her marriage to a U.S. citizen who is now deceased. 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, as explained below, we will remand the matter to the Director for the entry of a new decision.

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 their 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.*

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. She seeks a waiver of the two-year foreign residence requirement pursuant to the surviving relative provisions set forth in section 204(l) of the Act; she contends that she was residing in the United States when her U.S. citizen spouse died, she continues to reside in the United States at this time, and she is the beneficiary of an approved family-based visa petition. In support of her contention, the Applicant submitted a copy of her spouse's U.S. birth certificate, adoption decree, and death certificate. She also submitted a copy of her marriage certificate and documentation to establish that she obtained approval of her Form I-360, Petition for Widower of U.S. Citizen (Form I-360), in May 2019.

In response to the Director's September 2022 Notice of Intent to Deny (NOID) requesting evidence of a qualifying relative that would experience exceptional hardship, the Applicant again submitted evidence of her spouse's U.S. birth, in the form of his U.S birth certificate and his adoption decree. The Applicant again asserted that despite not having a qualifying relative at the time, the death of her U.S. citizen spouse should be deemed the functional equivalent of a finding of exceptional hardship pursuant to the surviving relative provisions of section 204(l) of the Act. The Director denied the application, finding that the Applicant had not established that she had a qualifying relative for purposes of a waiver of the two-year foreign residence requirement.<sup>1</sup>

On appeal, the Applicant asserts that she has provided evidence of her deceased spouse's U.S. birth on "at least two occasions." In support, she submits copies of documents previously submitted to the Director with the initial submission and in response to the Director's NOID, including her deceased spouse's U.S. birth certificate, adoption decree, and death certificate, and her marriage certificate and evidence of her Form I-360 approval. The Applicant again asserts on appeal that pursuant to section 204(l) of the Act, she is eligible for a waiver of the two-year foreign residence requirement despite the fact that she does not have a qualifying relative at this time as the death of her spouse "is deemed to be the equivalent of a finding of exceptional hardship."

Because the evidence on appeal is directly relevant to the Director's ground for denial of the Applicant's waiver application, we will remand the matter for further consideration of whether the Applicant has established eligibility for a waiver of the two-year foreign residence requirement.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

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<sup>1</sup> We note that in the decision to deny the waiver application, the Director did not reference or address the Applicant's assertions that she is eligible for a section 212(e) waiver based on the surviving relative provisions of section 204(l) of the Act.