U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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IN RE: [redacted]

APPLICATION: FORM I-612, APPLICATION FOR WAIVER OF THE FOREIGN RESIDENCE REQUIREMENT (UNDER SECTION 212(E) OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED)

ON BEHALF OF APPLICANT:

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Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Please direct any further inquiries to that office.

Thank you,

Barbara Q. Velarde

Barbara Q. Velarde
Chief, Administrative Appeals Office

U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-V-

DATE: DEC. 27, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

APPLICATION: 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, a native and citizen of India and J-1 nonimmigrant exchange visitor, seeks a waiver of the two-year foreign residence requirement. Immigration and Nationality Act (the Act) section 212(e), 8 U.S.C. § 1182(e). Certain J-1 exchange visitors may receive a waiver from the requirement to reside and be physically present in the country of their citizenship or nationality or last foreign residence for at least two years following departure from the United States before applying for an immigrant visa, lawful permanent resident status, or H or L nonimmigrant status. The waiver is available if departure would result in exceptional hardship to an exchange visitor's U.S. citizen or lawful permanent resident spouse or children or if an exchange visitor cannot return to the country of nationality or last residence because he or she would be subject to persecution on account of race, religion, or political opinion.

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 the Director erred in concluding that the resulting hardship to her family would not be exceptional.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter to the Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State (DOS), Waiver Review Division (WRD).

I. LAW

No foreign national admitted under section 101(a)(15)(J) of the Act, 8 U.S.C. § 1101(a)(15)(J), 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) of the Act 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, 8 U.S.C. § 1182(e).

The statute provides for waiver of this requirement, however, in the public interest upon the favorable recommendation of U.S. Citizenship and Immigration Services (USCIS), after USCIS has determined that departure from the United States would impose exceptional hardship upon the foreign national's U.S. citizen or lawful permanent resident (LPR) spouse or child, or that the foreign national 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. *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 because she acquired her J-1 status in order to received graduate medical education or training. As stated above, the Applicant is seeking a waiver of the two-year foreign residence requirement based on the claim that her LPR spouse and U.S. citizen children would suffer exceptional hardship if they moved to India temporarily with the Applicant and, in the alternative, if they remained in the United States while the Applicant fulfilled the two-year foreign residence requirement in India.

With her appeal, the Applicant submits a statement, a psychological evaluation of her spouse, medical and school records relating to her older daughter, a birth certificate for her younger daughter, employment records, articles about psychological effects of separation, and reports about country conditions in India.

After reviewing the entire record, we find that the Applicant's spouse and children would experience exceptional hardship if she complied with the two-year foreign residence requirement.

In adjudicating the Applicant's request for a hardship waiver, we first look to see if the Applicant has established that her LPR spouse and U.S. citizen children would experience exceptional hardship if they resided in India for two years with the Applicant. On appeal, the Applicant states that her spouse would suffer emotional hardship if he returned to India, in part due to discrimination and obstacles to obtaining employment based on his Sri Lankan nationality and foreign medical training. She states that her children would also face hardship in India, as they are not Indian citizens and would be restricted to tourist status, thereby limiting their access to education and other public services. Through her public school in the United States, the Applicant's older daughter receives weekly speech therapy to address ongoing articulation problems, but she would lose this therapy if she had to relocate abroad. The Applicant claims her daughter would also face emotional and social hardship due to her unfamiliarity with Indian culture and inability to speak Tamil, the language of the Applicant's home state. The Applicant also explains that her older daughter would face significant medical hardship in India: she suffers from asthma and eczema, and during her last visit to India, the environmental conditions exacerbated her asthma so severely that she required hospitalization. Additionally, she experienced extreme allergic reactions to mosquito bites. The Applicant states that the family as a whole would face hardship resulting from societal discrimination against her spouse and daughters because of their Sri Lankan ethnicity, and that they would have little support from the Applicant's family because her father disapproves of her marriage and her mother lives with and cares for her own elderly parents.

The record includes detailed affidavits from the Applicant and her spouse describing the discrimination the spouse faced as a Sri Lankan refugee in India and the related estrangement from the Applicant's family following their marriage. The Applicant has also submitted correspondence showing her daughter's ineligibility for documentation as a person of Indian origin due to her father's Sri Lankan nationality, and citations to pertinent regulations governing the limitations and prerequisites to medical licensure for non-citizens and those who were trained at foreign institutions. These documents are evidence of the obstacles the Applicant's family would face in attempting to relocate and establish themselves in India, and the record also reflects that the Applicant's spouse risks losing his LPR status in the United States if he resides abroad for two years. Medical records for the Applicant's older daughter establish her diagnoses of eczema, asthma, and hypersensitivity and also document her hospitalization for asthma and complications related to mosquito bites during her visit to India. The daughter's physician in the United States writes that travel overseas, including to India, would require evaluation and likely steroid treatment to avoid further medical complications; however, these treatments carry their own risks of adversely affecting her growth and bone mineral density. Viewed cumulatively, the record establishes that the Applicant's spouse and children would experience exceptional hardship if they relocated to India with the Applicant for a two-year period.

We now turn to the question of whether the Applicant has established that her spouse and children would experience exceptional hardship if they remained in the United States during the two-year

period that the Applicant resides in India. The Applicant asserts that the demands of caring for an infant, in addition to the couple's six-year old daughter, as a single parent while working full-time as a neurologist would be simply unmanageable for her spouse. The Applicant states that they have no family in the United States who can help with the children: although her mother came to the United States to help her when her youngest daughter was born, her mother is also responsible for her own parents in India, and therefore unable to remain with the children for the duration of the Applicant's absence. Thus, the Applicant explains, her spouse would bear the responsibility of caring for the children and managing the household on his own. Acknowledging that she has been separated from her spouse and oldest daughter—who reside in Minnesota—for four months during a training rotation in Arizona and, more recently, for one year for a surgical fellowship in Ohio, the Applicant says that these separations were not entered into lightly. Rather, she states, the training program was mandatory, and the fellowship was the only employment she could find in the United States after her J-1 program ended and therefore the only way she could remain in the country with her family. She claims that these periods of separation were stressful and painful for her family, even though her spouse and daughter visited her as frequently as possible. The record reflects that the daughter experienced regression in her behavior and her speech, and she also began experiencing nighttime bedwetting episodes, likely related to the stress of separation from her mother. A psychological evaluation of her spouse, completed after nearly 10 months of separation from the Applicant, showed that the demands of caring for the older daughter and household without the Applicant led to him developing numerous symptoms of anxiety and depression, including headaches, insomnia, skin rashes, weight loss, and shaking. The assessments revealed that the spouse was at increased risk of a stress-related health breakdown and was experiencing extreme levels of depression, anxiety/panic, and stress. The evaluator, a licensed clinical social worker, diagnosed the spouse with adjustment disorder with mixed anxiety and depressed mood, noting that the spouse's response to separation from the Applicant exceeded the degree of distress typically associated with such circumstances. The Applicant also asserts that both daughters would suffer psychological harm if separated from their mother for two years, especially given the infant's young age (she is still breastfeeding) and the unlikelihood of their visiting the Applicant due to the medical and other risks associated with their travel to India.

Most likely, the Applicant explains, their infant daughter would accompany her to India, while the spouse and older child remain in the United States. In turn, the Applicant states, this separation of the family would create new levels of emotional hardship, especially in consideration of the already limited opportunity the spouse has had to bond with the infant, who has been with the Applicant while she completes her fellowship in Ohio. The record thus establishes that the Applicant's LPR spouse and U.S. citizen children would experience hardship that significantly exceeds that normally suffered upon the temporary separation of families.

III. CONCLUSION

The Applicant has established that her qualifying relatives would experience exceptional hardship, were they to relocate to India or remain in the United States without the Applicant, for the requisite two-year term.

ORDER: The matter is remanded to the Director of the California Service Center to request a section 212(e) waiver recommendation from the Director of the U.S. Department of State, Waiver Review Division.

Cite as *Matter of A-V-*, ID# 1949935 (AAO Dec. 27, 2018)