U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9000719

Date: SEPT. 28, 2020

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 spouse and child.[1]

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 because the Applicant has not met this burden.

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

[1] The Applicant's second child was born in 2019, after the waiver application's filing date in 2017.

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 of her participation in a program funded in whole or in part by a government agency. 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 and child would suffer exceptional hardship if they moved to Cameroon temporarily with the Applicant and, in the alternative, if they remained in the United States while the Applicant fulfilled the remaining 18 months of her two-year foreign residence requirement in Cameroon.

In adjudicating the Applicant's request for a hardship waiver, we first look to see if the Applicant has established that her spouse and child would experience exceptional hardship if they resided in Cameroon for 18 months with the Applicant. The Director determined that the Applicant's spouse could suffer exceptional financial hardship were he to relocate to Cameroon with the Applicant. This finding is supported by the record and will not be disturbed on appeal.

Regarding separation, the Director determined that the Applicant's spouse and child would experience emotional and physical hardship that is typical for separated families and would not be exceptional. The Director stated that the record did not contain sufficient evidence to demonstrate that the spouse would be unable to cope with the normal sadness and anxiety associated with a temporary separation were he to remain in the United States without the Applicant or that the temporary financial difficulties caused by the Applicant's departure would result in exceptional hardship.

On appeal, the Applicant has not sufficiently addressed or overcome the deficiencies discussed in the Director's decision. The Applicant first notes that while the Director requested supplemental evidence pertaining to identity documents and travel history, the Director did not request additional documentation related to the hardship her spouse and children would suffer, and if the hardship evidence was requested, she would have provided it. The Applicant submits on appeal additional country conditions information for Cameroon, articles pertaining to the effects of family separations, and updated statements from her spouse and herself. However, the Applicant has still not provided sufficient evidence to establish her spouse and child would suffer exceptional hardship upon separation and relocation.

While we acknowledge the Applicant's spouse's statements regarding the emotional hardship that a separation would cause him, the record does not establish that these hardships would rise to the level of exceptional. As noted by the Director, the Applicant's spouse indicates his employment requires him to spend months away from home, up to eight months a year according to his psychological evaluation. The evaluation also states that the spouse is experiencing significant symptoms of anxiety and depression related to the Applicant's immigration process and the potential extended separation from his wife and child. However, the record indicates that the Applicant and her spouse experience lengthy separations caused by his employment, and the evidence does not establish that a separation of 18 months while the Applicant fulfills the rest of the two-year foreign residence requirement would result in emotional hardship beyond that experienced while they are separated due to his employment. Further, the Applicant has not established that her spouse is unable to visit her in Cameroon while she fulfills the remaining 18 months of her two-year foreign residence requirement.

While we acknowledge the statements in the record regarding the difficulties that separation from the Applicant would cause her 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 2017, after she signed the Form DS-2019 in 2016, indicating that she was aware of the two-year foreign residence requirement.

In addition, the Applicant contends that her child will suffer exceptional hardship upon relocating to Cameroon, due to the violence, political instability, and lack of adequate health care. The Applicant asserts that she and her child would have to live with her mother in the southwest region of the country where there is ongoing civil war, and that is under a U.S. Department of State travel warning. The Applicant states that if she and her child relocated to Douala instead, her child would still be unsafe due to continuous political protests there and limited access to quality health care. She indicates that her child would suffer financial hardship because she would be unable to find work to support herself and her child.

However, the record lacks sufficient documentation to establish that the Applicant could not find employment in Cameroon to support her child or that her spouse could not provide financial assistance. We note that the record reflects the spouse is the sole provider for the family, earning approximately $100,000 per year, and the Applicant stays at home with their child. Though the spouse contends that his salary is not sufficient to pay credit card expenses and support the Applicant and their child in Cameroon for 18 months, the evidence does not show that this financial difficulty would rise to the level of exceptional hardship. Further, the Applicant has not established that her child would suffer medical, physical, or emotional hardship that rises to the level of exceptional hardship, if she relocated with the Applicant to Cameroon while she fulfills the remaining 18 months of her two-year foreign residence requirement. The submitted evidence, such as the Applicant's and spouse's statements and country conditions reports for Cameroon, do not demonstrate that the Applicant would have to relocate to a part of the country where dangerous conditions exist or where medical care would be inadequate.

Due to the insufficiency of the evidence of hardship we conclude that the Applicant has not established that the hardships to her spouse upon separation, or to her child upon relocation, would be exceptional. Accordingly, the Applicant's waiver application will remain denied.

ORDER: The appeal is dismissed.