



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

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

In Re: 20583731

Date: FEB. 25, 2022

Appeal of California Service Center Decision

Form I-612, Application to Waive Foreign Residency Requirement

The Applicant, a native and citizen of Pakistan, seeks a waiver of the two-year foreign residence requirement for certain J nonimmigrant visa holders pursuant to section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). The Director of the California Service Center denied the Form I-612, Application to Waive Foreign Residency Requirement (waiver application), concluding that the Applicant did not have a qualifying relative and therefore did not establish exceptional hardship. On appeal, the Applicant submits additional evidence and asserts that the Director erred in making those conclusions.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Except where a different standard is specified by law, an applicant must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office reviews 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 remand this matter for further proceedings consistent with this decision.

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, 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 spouse or child, or that the foreign national cannot return to the country of his or her nationality or last residence because he or she would be subject to persecution on account of race, religion, or political opinion. *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, which may be waived upon establishing exceptional hardship to a U.S. citizen or lawful permanent resident spouse or child. The Applicant married a U.S. citizen on [] 2020, and filed his waiver application on May 21, 2020, claiming that his spouse would experience exceptional hardship if he departed the United States to meet the two-year foreign residence requirement. However, USCIS determined that the Applicant entered into a sham marriage solely for immigration purposes. Therefore, the Director found that the Applicant did not have a qualifying relative for the purpose of a waiver of the two-year foreign residence requirement. Specifically, the Director noted that the Applicant and his spouse have never been associated with the same address, he filed his waiver application [] after his marriage, and no financial records or evidence of communication were submitted. In addition, the Director mentioned that the marriage photographs submitted appeared staged, were undated, and did not include friends or family present to celebrate the marriage.

On appeal, the Applicant contends that the Director did not understand the circumstances of Pakistani marriage traditions and therefore erred in finding that he engaged in a sham marriage. He further asserts that his departure from the United States to satisfy the two-year foreign residence requirement would impose exceptional hardship upon his U.S. citizen spouse.

The Applicant has provided a brief and new material evidence in support of his waiver application including, but not limited to, a statement from his father-in-law related to the marriage and his role in performing it, multiple statements from friends who attended the wedding events, receipts from gifts that he bought for his spouse, pictures from the wedding events, joint bank account and credit card documentation, a jointly filed 2020 federal tax return, a statement from the Applicant's spouse, evidence of the Applicant's spouse's financial obligations, and information on marriage traditions and procedures, safety issues, and employment issues in Pakistan.

Considering the new claims and evidence submitted on appeal, we find it appropriate to remand the matter for the Director for reconsideration of whether the Applicant engaged in a sham marriage solely for immigration purposes and whether his departure from the United States to satisfy the two-year foreign residence requirement would impose exceptional hardship upon his U.S. citizen spouse.

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