MATTER OF TRAN

In Section 212(e) Proceedings

A-13707473

Decided by District Director October 15, 1965

Notwithstanding a determination that compliance with the foreign residence requirement of section 212(e), Immigration and Nationality Act, as amended, would result in exceptional hardship to the lawful permanent resident spouse and United States citizen child of an exchange visitor from Vietnam, a waiver of the requirement is denied since the favorable recommendation of the Secretary of State is a statutory prerequisite to the grant thereof and the Secretary has declined to make a favorable recommendation in her case.

Discussion: The applicant, a 37-year-old married female, is a native and citizen of Vietnam, and her last foreign residence was in that country. She entered the United States as an exchange visitor on September 4, 1958, sponsored by the Agency for International Development, United States Department of State, under Exchange Program G-II-100 for training in instructional materials development. She was placed at Teachers College, Columbia University, where she received her B.S. degree in education in June 1963. She studied for two years under a scholarship from her sponsor, the Agency for International Development, and at the request of this sponsor was granted three self-financed extensions as an exchange visitor, to September 3, 1963, so she could complete her training program.

The applicant was married on April 20, 1963, to Toan Van Tran, also a native and citizen of Vietnam. She resides in Pacific Grove, California, with her husband, who is a lawful permanent resident of the United States, and their United States citizen child, born February 12, 1964. Both she and her husband are employed as teachers of the Vietnamese language at the United States Defense Language Institute, West Coast Branch, Monterey, California. The applicant's employment is on a temporary contract which will expire December 17, 1965. Her application for waiver of the foreign residence requirement is based on the hardship which compliance with the requirement would impose on her spouse and child.

Section 212(e) of the Immigration and Nationality Act, as amended, provides that the foreign residence requirement may be waived in this type of case by the Attorney General, upon the favorable recommendation of the Secretary of State pursuant to request of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the exchange alien's spouse or child, if such spouse or child is a citizen of the United States or a lawfully resident alien, and provided the exchange alien's admission is found by the Attorney General to be in the public interest.

The Attorney General's authority to grant waivers under section 212(e) is delegated by regulations promulgated under authority of the statute, to the Commissioner of Immigration and Naturalization who in turn has delegated such authority to the District Director. However, the statute specifies that the favorable recommendation of the Secretary of State is a prerequisite to the grant of a waiver. The facts in this case were carefully considered by the District Director, who determined that compliance with the foreign residence requirement would impose exceptional hardship upon the applicant's spouse and child. The waiver application, showing such determination, was then presented to the Bureau of Educational and Cultural Affairs, Department of State, as required by State Department regulations, 22 CFR 63.6(f), with a request that the Secretary of State recommend whether the waiver should be granted. In a letter dated September 15, 1965, the Department of State replied that Mrs. Tran's case had been carefully reviewed and the conclusion was reached that it would not be in the best interest of the exchange visitor program to support her request for waiver of the foreign residence requirement. The letter further states that recommendation of the Department of State is that Mrs. Tran fulfill her commitment by returning to Vietnam. where her services are urgently needed.

Since the favorable recommendation of the Secretary of State is a prerequisite to the grant of a waiver under section 212(e) and the Secretary has declined to make such favorable recommendation in this case, the waiver may not be granted.

ORDER: It is ordered that the application for waiver of the foreign residence requirement of section 212(e) of the Immigration and Nationality Act, as amended, be and is hereby denied on the ground that the Secretary of State has declined to make a favorable recommendation and the applicant is therefore statutorily ineligible for the waiver.