MATTER OF KIM

In Section 212(e) Proceedings

A-13276410

Decided by District Director September 17, 1965

An exchange visitor, a native of North Korea and national of South Korea who has resided most of his life in Manchuria and Japan, is granted a waiver of the foreign residence requirement of section 212(e), Immigration and Nationality Act, as amended, since compliance therewith would result in exceptional hardship to his U.S. citizen wife and children to whose support he would be unable to contribute as he can return only to South Korea where he would be immediately subject to military service for a minimum period of 3 years with monthly pay equivalent to $50. U.S. currency; his wife has been undergoing treatment, including psychiatric, for a depressed and nervous condition which precludes her seeking remunerative employment, and even if she were able she could not accept employment because there is no one to care for the 3 infant children, the youngest of which suffers from a skin ailment which requires a great amount of extra care and close attention.

Discussion: Dr. Kim is a thirty-eight-year-old physician, a native of North Korea, but a national and citizen of the South Korean Republic. He was admitted to the United States as an exchange visitor on July 12, 1959, for an internship sponsored by the Charleston General Hospital, Charleston, West Virginia, under Exchange Visitor Program No. P-II-1490. He transferred to the Union Memorial Hospital at Baltimore, Maryland, on June 30, 1960, under Exchange Visitor Program No. P-II-672, where he completed his internship on June 30, 1961. He transferred for a residency in internal medicine to the New England Deaconess Hospital at Boston, Massachusetts, under Exchange Visitor Program No. P-II-489. He transferred for another residency to the Misericordia Hospital at New York, New York, in June 1962, under Exchange Visitor Program No. P-II-545, remaining there until October 31, 1962, at which time, he again transferred back to the Charleston General Hospital, Charleston, West Virginia, where his residence training was completed in October 1963. He then joined the staff of the Laird Memorial Hospital at Montgomery, West Virginia, on November 1,

1963, and remained there until April 15, 1965, at which time, he moved to Waldoboro, Maine, where currently he is a general medical practitioner and a member of the staff of the Knox County General Hospital in Rockland, Maine.

The applicant's United States born wife and three United States citizen children reside with him on Pleasant Street, Waldoboro, Maine. The applicant will be unable to contribute to their support, if he is forced to leave the United States and return to the Republic of Korea, for the following reasons: Dr. Kim was born and resided in North Korea until four years of age, then was taken by his parents to Manchuria where he resided until 1945. He left Manchuria upon the coming of the Russians to that Country and fled to North Korea where he remained for about six months and then went to South Korea in 1946. In 1947, he went to Japan where he remained until 1959, at which time, he came to the United States as a national of the Republic of Korea, in possession of a passport issued to him by the government of the Republic of Korea. He cannot return to Japan as his permanent resident status there terminated after one year of his departure from Japan. He can only return to South Korea, where he has no family or friends, having resided there for only about five months. As a Republic of Korea national who has not as yet served his military commitment, he would be immediately subject to service in the armed forces there. A sworn affidavit was submitted by the applicant's attorney certifying as to the fact that confirmation has been received from the Consul for the Korean Republic at the Korean Consul General's office in New York, N.Y., as to the following statement. The law of the Republic of Korea requires that all doctors, upon completion of medical training must serve in the Army of the Republic of Korea for a period of three years; that they are inducted with the rank of captain; that their salary is approximately $50.00 in United States equivalents and that the Army may in its discretion extend the service for an additional two years. His father was killed in the Korean War and his mother has disappeared. His wife is unable to accept remunerative employment since she has no one to care for the children, two of whom were born on March 8, 1964, and the other born on March 30, 1965. The youngest child is suffering from a skin ailment and requires a great amount of extra care and close attention. The subject's wife has been undergoing treatment including psychiatric for a depressed and nervous condition which also precludes employment. She is estranged from her parents because of her marriage to Dr. Kim and they will render no assistance, financial or other.

Satisfactory evidence of Dr. Kim's marriage on September 6, 1963, to a United States citizen, and the birth of his three United States citizen children, has been submitted. There are no adverse factors in this case.

In view of the foregoing, it has been determined that compliance with the foreign residence requirement of section 212(e) of the Immigration and Nationality Act, as amended, would impose exceptional hardship upon Dr. Kim's United States citizen spouse and children. The case has been presented to the Secretary of State for review and recommendation, and he has recommended that the waiver should be granted.

ORDER: It is ordered that this application for a waiver of the foreign residence requirement of section 212(e) of the Immigration and Nationality Act, as amended, be granted.