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U.S. Citizenship
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Services

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NOV 03 2004

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date:

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of of the Foreign Residence Requirement under Section 212(e)
of the Immigration and Nationality Act; 8 U.S.C. § 1182(e).

ON BEHALF OF APPLICANT:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Pakistan who is subject to the two-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). The applicant was admitted into the United States as a J1 nonimmigrant exchange visitor on May 1, 1997, and his J1 exchange visitor status expired on September 24, 2002. On January 19, 2001, the applicant married a U.S. citizen. The applicant presently seeks a waiver of his two-year foreign residence requirement in Pakistan, based on the claim that his U.S. citizen wife will suffer exceptional hardship if she is separated from him for two years.

The director concluded that the applicant's wife (Ms. [REDACTED]) would suffer exceptional hardship if she accompanied the applicant to Pakistan. The director determined, however, that the applicant had failed to establish his wife would suffer exceptional hardship if she remained in the U.S. while the applicant fulfilled his two-year foreign residence requirement in Pakistan. The application was denied accordingly.

Counsel asserts on appeal that Ms. [REDACTED] will suffer exceptional mental hardship if the applicant returns to Pakistan for two years. Counsel additionally asserts that the director acknowledged in his decisions that the applicant would be persecuted if he returns to Pakistan. Counsel concludes that the applicant is thus also eligible for a persecution-based section 212(e) waiver.

Section 212(e) of the Act states in pertinent part that:

- (e) No person admitted under section 101(a)(15)(J) or acquiring such status after admission
 - (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, [s]hall 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) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency . . . or of the Commissioner of Immigration and Naturalization [now, Citizenship and Immigration Services, CIS] after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien 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, the Attorney General [now the Secretary, Homeland Security, "Secretary"] may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General [Secretary] to be in the public interest. . . And provided further, That, except in the case of an alien described in clause (iii), the Attorney General [Secretary] may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

In *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals (Board) stated that, "[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)".

In *Matter of Bridges*, 11 I&N Dec. 506 (BIA 1965), the Board stated:

In determining the merits of an application for a waiver of the foreign residence requirement, we must consider the Congressional intent of the statute . . . the Subcommittee reiterates and stresses the fundamental significance of a most diligent and stringent enforcement of the foreign residence requirement. The report states, "It is believed to be detrimental to the purposes of the program and to the national interests of the countries concerned to apply a lenient policy 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 this country would cause personal hardship."

The present record contains a February 13, 2002, affidavit from Ms. [REDACTED] stating that it would be difficult to pursue or finance a medical degree without her husband's support, and that she would suffer stress related to fears for her husband's safety, if he returned to Pakistan.

The record also contains an October 8, 2003, letter signed by Ms. [REDACTED] mother and step-father, stating that their daughter has undergone treatment for severe stress and anxiety for years, and that their daughter's condition has caused her to be hospitalized and unable to work for an extended period of time. The affidavit states further that Ms. [REDACTED] depends on the applicant for health benefits and that a previous attempt to work and study at the same time caused Ms. [REDACTED] such stress and anxiety that she ended up in the hospital. The letter states that Ms. [REDACTED] will be unable to continue medical school or support herself without the applicant. The affidavit additionally states that the applicant may be persecuted in Pakistan because of his U.S. medical training and his marriage to a white non-Muslim U.S. citizen.

The record contains the following documents relating to Ms. [REDACTED] mental condition:

A February 17, 2003, evaluation by psychoanalyst, Deborah Potashnik, noting that Ms. [REDACTED] was referred by the applicant's attorney for an interview and evaluation of her psychological and emotional state. Based on an interview with both Ms. [REDACTED] and the applicant, Dr. Potashnik concluded Ms. [REDACTED] suffers from debilitating anxiety effects of Panic Disorder with Agoraphobia (DSMIV 300.12). Dr. Potashnik attributed Ms. [REDACTED] condition to a traumatic childhood in which Ms. [REDACTED] experienced

the divorce of her parents when she was two-years-old, the re-marriage of her mother, the presence of half-siblings, and an unsatisfying relationship with her natural father, due to his alcoholism. Dr. Potashnik concluded that the lack of a secure and stable home life and loving parents affected Ms. [REDACTED] independence and autonomy, caused her to attach herself to others, and caused her to be vulnerable to anxiety disorders, and Dr. Potashnik additionally concluded that for Ms. [REDACTED] normal separations are "synonymous with panic and sickness". Dr. Potashnik indicated that Ms. [REDACTED] suffered "crippling homesickness and an episode of double pneumonia" when she tried to attend college away from home. Dr. Potashnik indicated further that Ms. [REDACTED] subsequently moved home, and upon, "perceiving herself to be secure and settled in close proximity to her mother, [Ms. [REDACTED]] resumed classes at a local college and worked at a nearby hospital."

Dr. Potashnik stated that in 1999, Ms. [REDACTED] began dating the applicant and began living on her own. According to Dr. Potashnik, Ms. [REDACTED] described that four months later she experienced physical symptoms of pressure in her chest, hyperventilation and spasms, which caused her to pass out and to feel paralyzed. Ms. [REDACTED] also described being hospitalized for a week, with all cardiac and neurological tests proving negative. Ms. [REDACTED] returned home after the incident, left school and quit her job. Dr. Potashnik's evaluation diagnoses this event as a "severe anxiety reaction".

Dr. Potashnik noted in her evaluation that the applicant is fourteen years older than the applicant, and according to Dr. Potashnik, the applicant described to her that after Ms. [REDACTED] "panic event" he decided to help Ms. [REDACTED] reach her dreams, something he knew she could not do without him. The two subsequently married. The applicant then described his observation that Ms. [REDACTED] has sobbing attacks and outbursts of rage and that she suffers from "relentless vomiting and tremors."

Dr. Potashnik concluded that based on Ms. [REDACTED] description of spontaneous physical symptoms matching those caused by panic attacks (i.e. shortness of breath, trembling, inability to cope, tightness in chest, feelings of becoming paralyzed) as well as Ms. [REDACTED] description of traumatic loss during childhood, supported a diagnosis of panic disorder and agoraphobia. As treatment, Dr. Potashnik stated she was "[c]onfident that Mrs. [REDACTED] debilitating anxiety symptoms can be lessened, perhaps blocked, by appropriate medication." In addition, Dr. Potashnik recommended individual therapy and couple treatment for the development of a more satisfying interdependency and open communication between the applicant and Ms. [REDACTED]

The record contains an October 6, 2003, letter from Dr. Potashnik repeating her February 2003, psychological diagnosis of Ms. [REDACTED] and stating that Ms. [REDACTED] has been in "weekly psychodynamically oriented psychotherapy" with Dr. Potashnik since March 2003. Dr. Potashnik states that Ms. [REDACTED] predisposing anxiety condition can easily be aggravated by external situations", and that Ms. [REDACTED] has been prescribed psychotropic medication to alleviate her symptoms. In addition, Dr. Potashnik states that Ms. [REDACTED] and the applicant have attended several co-joint marital counseling sessions.

The AAO finds that the evidence submitted by the applicant fails to establish that Ms. [REDACTED] would suffer exceptional hardship if the applicant returns temporarily to Pakistan to fulfill his J1 foreign residence requirement.

The AAO notes that Dr. Potashnik's diagnosis of panic disorder with agoraphobia is based in large part on the applicant's claim that in 1999, when the applicant was nineteen years old, she suffered physical symptoms that are associated with the syndrome. The AAO notes that the applicant's own affidavit does not refer to the panic attack incident or to any incident of hospitalization. Moreover, Dr. Potashnik's report lacks detailed information regarding the context and circumstances of the event or the date of the attack. Dr. Potashnik's evaluation also contains no indication that she saw or reviewed evidence or otherwise verified that the 1999 event took place. Furthermore, the record contains no corroborating medical, employment, school, or other evidence to establish that the applicant suffered an attack, that she was hospitalized or diagnosed with a panic attack in 1999, or that she stopped working and attending school because of the event.

The AAO notes further that the information contained in Dr. Potashnik's evaluation fails to demonstrate that the double pneumonia and homesickness which caused the teen-aged Ms. [REDACTED] to return home from college was due to an anxiety disorder. Furthermore, the AAO notes that although Dr. Potashnik's evaluation implies that the applicant married Ms. [REDACTED] subsequent to the 1999, panic attack because he believed Ms. [REDACTED] needed him and could not realize her dreams without him, the applicant did not marry or live with Ms. [REDACTED] until January 2001, approximately two years after the event. In addition, the AAO notes that although the applicant described Ms. [REDACTED] experiencing emotional outbursts, sobbing attacks and relentless vomiting and tremors after their marriage, the record contains no other mention of these events, and the record contains no medical evidence to corroborate the claims, or to indicate the cause of the events.

In addition, the AAO notes that the record contains contradictory information relating to Ms. [REDACTED] childhood experience. Although Dr. Potashnik indicates that as a child Ms. [REDACTED] lacked loving parents and a secure and stable home life, the evaluation later states that Ms. [REDACTED] returned home from college because she felt secure and settled near her mother. The AAO notes that Ms. [REDACTED] returned to the home, not only of her mother, but to that of her mother and stepfather. Moreover, the AAO notes that Ms. [REDACTED] stepfather referred to Ms. [REDACTED] as his daughter in his October 2003 letter.

The AAO notes that the October 6, 2003, letter, by Dr. Potashnik does not refer to any examples or episodes of panic disorder or severe anxiety experienced by Ms. [REDACTED] either on or since her first February 2003, meeting with Dr. Potashnik. Rather, the letter repeats the information and diagnosis contained in Dr. Potashnik's February 2003 evaluation of Ms. [REDACTED]. The October 2003 letter states that Ms. [REDACTED] attends weekly psychotherapy sessions with Dr. Potashnik, and that Ms. [REDACTED] has been prescribed psychotropic medication to alleviate her symptoms. However, the October 2003 letter contains no detailed or corroborative information regarding the context, content, length or progress of the counseling sessions, or regarding any symptoms that Ms. [REDACTED] is experiencing.

Based on the above concerns, the AAO finds that the applicant has failed to establish that Ms. [REDACTED] would suffer exceptional emotional hardship if she were temporarily separated from the applicant. Moreover, the AAO notes that even if it were established that Ms. [REDACTED] suffered from Panic Disorder with Agoraphobia, Dr. Potashnik's appeared confident in her February 2003, evaluation that the symptoms could be treated with medication.

The AAO additionally finds that the applicant has failed to establish that Ms [REDACTED] would reasonably suffer exceptional emotional hardship related to her fears for her husband's safety in Pakistan. The AAO notes that the country conditions submitted on appeal are general in nature, and that they do not speak to, or relate specifically to the applicant's situation, and counsel has failed demonstrate that the applicant would be targeted by terrorist groups because of his marriage to a non-Muslim U.S. citizen, or due to the fact that he studied and resided in the United States. Moreover, although the record contains news article information reflecting that between 1998 and 2002, approximately seventy medical physicians were killed in Karachi by unknown assailants, the AAO found no information to indicate that the killing of medical physicians has been ongoing since 2002, or to establish that it is a countrywide phenomenon. The AAO notes further that the medical physicians killed were all in Karachi, and that most of those killed were Shi'a. The present record fails to establish the applicant would be targeted as a Shi'a medical physician in Karachi, or that he would be unable to return to Pakistan and work in a city other than Karachi.

Accordingly, the AAO finds that the evidence contained in the record fails to establish that the applicant's wife would suffer hardship beyond that normally suffered by family members if she were separated from the applicant for two years.

In addition to the above findings, the AAO finds that the applicant has failed to establish that he would be persecuted if he returned to Pakistan. The AAO notes that the director's decision did not analyze a persecution claim by the applicant, and that the director did not make a finding of persecution in the applicant's case. The AAO notes further that section 212(e) of the Act requires the applicant establish that he *would be subject* to persecution upon return to Pakistan on account of *race, religion or political opinion*. The applicant has failed to demonstrate that he would be persecuted in Pakistan on any of the above grounds.

The burden of proving eligibility for a waiver under section 212(e) of the Act rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that the applicant has not met his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.