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U.S. Citizenship
and Immigration
Services

H/B



FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **NOV 05 2004**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska 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 Jordan 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 record reflects that the applicant was admitted to the United States as a J1 nonimmigrant exchange visitor on September 2, 2001. The applicant's J1 status ended approximately one month later on October 5, 2001. The record reflects that the applicant did not return to Jordan when his J1 status ended, and that he instead remained unlawfully in the United States. The applicant married a U.S. citizen approximately 1½ years later, on April 16, 2003. He presently seeks a waiver of his two-year foreign residence requirement in Jordan, based on the claim that his U.S. citizen wife will suffer exceptional hardship if she moved with him to Jordan or if she remained in the U.S. and were separated from the applicant for two years.

The director determined that pursuant to relevant legal decisions, Congress has stressed the need for diligent and stringent enforcement of J1 foreign residence requirements. The director found that the applicant and his wife [REDACTED] were aware of both the applicant's foreign residence requirements and [REDACTED] mental condition, at the time of their marriage. The director determined that given the circumstances of the applicant's marriage, any weight given to emotional hardship that [REDACTED] would suffer on account of the couple's temporary separation was diminished. The director noted that [REDACTED] and her children were not obligated to return to Jordan with the applicant. The director then determined that the applicant had failed to establish that his wife would suffer exceptional hardship if the applicant fulfilled his two-year foreign residence requirement.

On appeal, counsel asserts that the marriage between the applicant and his wife is bona fide, and that the director used the fact that [REDACTED] had a pre-existing bi-polar disorder condition as an improper basis for denying the applicant's waiver under section 212(e) of the Act.¹

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

¹ The AAO notes that the applicant additionally indicates in a personal statement that section 212(e) foreign residence requirements should be waived because the Jordanian Department of Statistics stated in writing that it does not object to the applicant's pursuing a foreign residence requirement waiver.

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

[T]he Attorney General [now Secretary, Homeland Security, "Secretary"] may, upon the favorable recommendation of the Director [Waiver Review Division (WRD)], 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.

The record contains no evidence to establish that the Director, WRD, has provided a favorable recommendation in the applicant's case. Section 212(e)(iii) of the Act is therefore inapplicable in the present case.

(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, shall 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 a 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, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), 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 except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(l): 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.

The record contains the following evidence relating to [REDACTED] exceptional hardship claim:

A Personal Statement by the applicant stating that his wife requires the treatment of a skilled psychiatrist, that she takes a variety of psychiatric medications, and that she requires close

monitoring. The applicant states that he and his wife are very much in love and that she would probably have a break down if he had to leave the country.

A letter dated July 7, 2003, written by Licensed Independent Social Worker, [REDACTED] stating that [REDACTED] was seen at the [REDACTED] Center on March 1, 2003, after a one-week psychiatric hospitalization at the Akron General Medical Center. The letter states that [REDACTED] was diagnosed with Bipolar I Disorder, and that she was prescribed medication to be taken at bedtime and twice a day. The letter states that Ms. [REDACTED] planned to transfer her care to the [REDACTED], and that as of their last contact on July 3, 2003, [REDACTED] condition was stabilized.

A September 9, 2003, Psychological Report by psychologist, [REDACTED] bases his report on background information and a September 8, 2003, telephonic interview, with [REDACTED]. He indicates that [REDACTED] was diagnosed with a bipolar disorder approximately three years ago, and that she was hospitalized for one week at that time. According to [REDACTED] stated during her interview that she is currently employed as a nursing assistant, and that she was divorced in 1998 after being married for about five years. [REDACTED] also stated in her interview that she has a twelve-year-old daughter and an eight-year-old son, who have regular visitation with their natural father and both of whom were removed from [REDACTED] home by the Social Services Department in February 2003, due to [REDACTED] bipolar disorder symptoms. [REDACTED] indicated that [REDACTED] children do not presently live with her but that she believes that she will regain custody over them soon. According to [REDACTED] described deep love for the applicant, and had clear joy in her voice when she described their relationship. Ms. [REDACTED] stated that she cannot travel to Jordan with the applicant because she must remain near her children, who in turn must remain near their natural father. [REDACTED] concluded that a separation from the applicant would be a devastating experience for [REDACTED] and could destabilize her and make her more vulnerable to the symptoms of mania or depression.

The AAO notes that [REDACTED] was referred to [REDACTED] J1 waiver application purposes, and that Dr. [REDACTED] did not, at any time, meet personally with [REDACTED]. The AAO notes further that [REDACTED] conclusions are based on a single telephonic interview with [REDACTED] of undetermined length or format, and although [REDACTED] indicates that his report is based in part on background information, the report contains no information or details regarding what background information was reviewed or how it was used for purposes of the report. The report contains no indication that [REDACTED] independently verified any of the behavioral or personal history information that [REDACTED] provided to him, and the record reflects that [REDACTED] was not a patient of [REDACTED] prior to or subsequent to their interview on September 8, 2003. [REDACTED] did not recommend or prescribe a treatment plan for [REDACTED]. Moreover, the record contains no evidence to establish that [REDACTED] is presently obtaining medical or psychological treatment for bipolar disorder.

The AAO notes further that [REDACTED] statements that [REDACTED] was hospitalized for approximately one week and was diagnosed with bipolar disorder approximately three years ago, is unsupported by any evidence in the record and is contradicted by the July 7, 2003 letter written by [REDACTED] which indicates that [REDACTED] was seen and diagnosed with bipolar disorder on March 1, 2003 after being hospitalized for one week. The AAO additionally notes that, in contrast to [REDACTED] findings, the July 7, 2003, letter

from [REDACTED] indicates that as of July 3, 2003, [REDACTED]'s condition was well stabilized with the use of medication. Furthermore, the AAO notes that the information pertaining to a bipolar episode in February 2003, and pertaining to [REDACTED] children and ex-husband is also unsupported by any other evidence or information in the record.

Based on the above concerns, the AAO finds that the conclusions reached in [REDACTED] psychological report are unreliable and thus have no probative value regarding [REDACTED]'s psychological condition or regarding the effect that a two-year separation from the applicant would have on [REDACTED].

In addition, the AAO finds that the applicant is not a mental health expert, and that the statement written by him has no probative value as to [REDACTED] mental condition or regarding the psychological effect a two-year separation would have on her.

In *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals 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 *Keh Tong Chen v. Attorney General of the United States*, 546 F. Supp. 1060, 1064 (D.D.C. 1982), the U.S. District Court, District of Columbia stated that:

Courts deciding 212(e) cases have consistently emphasized the Congressional determination that it is 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 his country would cause personal hardship. Courts have effectuated 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." (Quotations and citations omitted).

The AAO finds that the record contains no evidence to support the assertion that [REDACTED] would suffer family-based exceptional hardship if she moved with the applicant to Jordan. Moreover, even if the applicant had provided evidence to establish that [REDACTED] would suffer exceptional hardship due to her legal inability to take her children with her to Jordan, the AAO nevertheless finds that the evidence in the record fails to establish [REDACTED] would suffer exceptional emotional hardship if she were temporarily separated from the applicant. The applicant has failed to establish that [REDACTED] suffers from a condition that she is unable to control with medication. The applicant has additionally failed to establish that [REDACTED] is in any way dependent on the applicant, that her marriage to the applicant has in any way affected her mental condition, or that she would suffer hardship beyond the anxiety and loneliness ordinarily anticipated from a two-year separation, if the applicant returned temporarily to his country.

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, and the appeal will be dismissed.

ORDER: The appeal is dismissed.