



U.S. Citizenship  
and Immigration  
Services

H-3

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

SEP 15 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION:** The waiver application was denied by the Director, California 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 the West Bank in Palestine. She 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), because she participated in an exchange program financed in part by the United States (U.S.) government for the purpose of promoting international, educational and cultural exchange.

The applicant was admitted into the United States as a J1 nonimmigrant exchange visitor from September 2001 through August 2003. The applicant extended her visa through mid-August 2004, for the purpose of academic training. On January 13, 2004, the applicant married a naturalized U.S. citizen. The applicant presently seeks a waiver of her two-year residence requirement in the West Bank, based on the claim that her U.S. citizen husband will suffer exceptional hardship if he is separated from the applicant, and based on the claim that she will be subjected to persecution if she returns to the West Bank.

The director concluded that the applicant's husband (Mr. [REDACTED]) would suffer exceptional hardship if he accompanied the applicant to the West Bank. However, the director determined that the applicant had failed to establish that Mr. [REDACTED] would suffer exceptional hardship if he remained in the U.S. while the applicant fulfilled her two-year residency requirement in the West Bank. The director additionally determined that the applicant had failed to establish that she would be persecuted in the West Bank. The application was denied accordingly.

Counsel asserts on appeal that the evidence contained in the record establishes Mr. [REDACTED] will suffer exceptional emotional hardship if the applicant returns to the West Bank for two years. Counsel asserts further that the evidence establishes the applicant may be subjected to religious-based persecution by Palestinians, because she is a Christian woman married to a Muslim man, and because she may be viewed by Palestinians as a traitor due to her marriage to a Shiite Muslim man from Iraq and because she spent several years in the United States. In addition, counsel indicates that the applicant could be subjected to family honor killings because of her marriage to a Muslim man from Iraq. Counsel also asserts that the director erred in making an exceptional hardship determination in the applicant's case without first requesting an advisory opinion from the U.S. Department of State.

The AAO notes first that although the director may not waive a two year residence abroad requirement without first obtaining a favorable recommendation on the waiver from the United States Information Agency (USIA), (now, Director, Waiver Review Division (WRD), U.S. State Department Visa Office), the director is not prohibited from independently making an exceptional hardship determination and denying a section 212(e) waiver prior to obtaining a recommendation from the WRD. *See Silverman v. Rogers*, 437 F.2d 102 (1<sup>st</sup> Cir. 1970). *See also Dina v. Attorney General of the United States*, 793 F.2d 473, (2<sup>nd</sup> Cir. 1986) (discussing Attorney General (now Secretary, Homeland Security) authority to make an extreme hardship finding in section 212(e) cases, and the subsequent requirement of obtaining a favorable recommendation from the USIA (WRD) prior to being able to grant the waiver); *see also, Chong v. USIA*, 821 F.2d 171, 176 (3<sup>rd</sup> Cir. 1987) (stating that the USIA (WRD) role is to determine the policy, program, and foreign relations aspects of a case, and to weigh them against the hardship determined by the INS (now Citizenship and Immigration Services, CIS)). The AAO therefore finds that the director was not required to obtain a U.S. Department of State advisory opinion prior to making an exceptional hardship determination in the applicant's case.

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 . . . [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 Bridges*, 11 I&N Dec. 506 (BIA 1965), the Board of Immigration Appeals (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."

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 *Huck v. Attorney General of the U.S.*, 676 F. Supp. 10 (D.D.C. 1987) the U.S. District Court, District of Columbia, additionally stated that:

Courts have recognized that the "exceptional hardship" standard must be stringently construed lest the waiver exception swallow the salutary two-year residence rule . . . . Forceful application of the standard also guards against attempts by applicants to manufacture hardship in order to come within its terms. (Citations omitted).

The District Court stated further that the Immigration and Naturalization Service (INS, now CIS) must consider the totality of circumstances when making a 212(e) waiver exceptional hardship determination. *Id.* (citing *Slyper v. Attorney General*, 576 F.Supp. 559, 560 (D.D.C. 1983) and *Ramos v. INS*, 695 F.2d 181, 189 (5<sup>th</sup> Cir. 1983)).

The AAO finds that the totality of the evidence in the present case fails to establish that Mr. [REDACTED] would suffer exceptional hardship if his wife were required to return to the West Bank for two years.

The exceptional hardship evidence contained in the record includes a statement from the applicant stating that Mr. [REDACTED] could suffer religious and nationality-based harm if he moved to the West Bank with the applicant, and that Mr. [REDACTED] would face economic hardship in the West Bank. The letter does not address any hardship that Mr. [REDACTED] would suffer if he remained in the U.S. for two years while the applicant fulfilled her section 212(e) foreign residence requirements. The AAO notes further that the record contains no statements from Mr. [REDACTED] regarding the hardship he would face if the applicant returned to the West Bank for two years, and the record contains no other evidence to indicate or establish that Mr. [REDACTED] would suffer extreme hardship if the applicant returns to the West Bank.

The AAO finds further that the evidence in the record fails to support counsel's contention that the applicant would be subjected to persecution on account of religion and imputed political opinion, if she returned to the West Bank.

The AAO notes that the applicant's personal statement reflects that she fears for her husband's safety if he accompanies her to the West Bank. The statement does not, however, indicate that the applicant fears that she, herself, will be persecuted if she returns to the West Bank alone for two years. Moreover, counsel's assertions regarding the possibility of persecution against the applicant do not specifically identify who would persecute the applicant. Counsel's implication that Palestinians in general are hostile towards interfaith marriages, and towards Shiite Iraqis and people who have lived in the U.S. for a lengthy period of time, is unsubstantiated by the record. Moreover, although the Department of State country condition reports contained in the record reflect that Israeli-Palestinian based civil strife exists in the West Bank, the reports contain no evidence to indicate that Palestinians in general would be aware of the applicant if she returned to the West Bank, or that they would target and attack or harm the applicant on account of her marriage to a Muslim or on account of her residence in the United States. The record is also devoid of evidence to support the contention by counsel that the applicant could be subjected to family honor killings if she temporarily returned to the West Bank.

Section 212(e) of the Act requires that the applicant establish that she would be subject to persecution upon return to their country of nationality or last residence. The AAO finds that the applicant has failed to establish

that she would be persecuted in the West Bank on account of religion or on account of imputed political opinion.

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 in the present case, the applicant has not met her burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.