



U.S. Citizenship
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FILE:

Office: NEBRASKA SERVICE CENTER

Date: FEB 22 2005

IN RE:



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:

SELF-REPRESENTED

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, 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 Turkey. He was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on March 25, 1995 to attend graduate school at Ohio State University in Columbus, Ohio. The applicant 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 his participation was financed by the Turkish government. The record reflects that the applicant married [REDACTED] a United States citizen (USC), on July 5, 2002. The applicant seeks a waiver of his two-year residence requirement in Turkey, based on the claim that his wife would suffer exceptional hardship if she accompanies him to Turkey, or if she remains in the United States while the applicant lives in Turkey for two years.

The Director found that the circumstances of a two-year separation of the family with accompanying anxiety, loneliness and altered financial circumstances are the hardships to be anticipated by compliance with the two-year residence requirement, not exceptional hardships. The application was denied accordingly. *Decision of the Director*, Nebraska Service Center, Lincoln, Nebraska, February 19, 2004.

On appeal, the applicant contends that his wife will suffer exceptional hardship if she accompanies him to Turkey for the two years he is required to live there, or if she remains in the United States while the applicant lives in Turkey. In support of the appeal, the applicant submitted a statement from himself and a letter from [REDACTED] Psychiatrist, Dr. Chuck Flanagan. The entire record was considered in rendering this decision.

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

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, 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 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, 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 the Immigration and Naturalization [now, the Director of 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.

In *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals stated that, "[E]ven though it is established that the requisite hardship would occur abroad, it must also be shown that the spouse would suffer as the result of having to remain in the United States. Temporary 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 [section] 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.)

I. Potential Hardship to [REDACTED] if She Accompanies the Applicant to Turkey

First examined is the potential hardship to [REDACTED] if she moves to Turkey with the applicant. In support of the original waiver application, the applicant submitted a letter dated May 13, 2003 in which he stated:

[REDACTED] is injured and disabled in her arms due to an injury from her previous employment. She needs regular visits to a doctor specialized in joint conditions. Under limited living conditions in Turkey, it is highly unlikely that she will be able to get the treatment for her

conditions. My hometown in Turkey, Agri, a city located in [sic] eastern part of Turkey, is in [sic] a few hours driving distance to Iran (40), a dangerous environment for foreigners. [REDACTED] will have great difficulties in adjusting to the environment, learning the language [sic] and culture, etc.

The applicant submitted no evidence to support his claim that [REDACTED] will be unable to receive adequate medical care in Turkey, that it would be dangerous for [REDACTED] to live in Agri, or that [REDACTED] would have a difficult time adjusting to Turkish culture. Aside from the above quotation, the record contains no other reference to the potential hardship [REDACTED] would face if she moved to Turkey with the applicant. The evidence in the record fails to establish that the applicant's wife would suffer exceptional hardship if she moves to Turkey with the applicant for the two years he is required to live there.

II. Potential Hardship to [REDACTED] if She Remains in the United States While the Applicant Lives in Turkey

The applicant contends that his departure will damage [REDACTED] mental and physical health. In his May 13, 2003 letter in support of the original waiver application, the applicant stated:

[REDACTED] has a mental condition that requires her taking medicine and visiting a doctor regularly. It is likely that [REDACTED] will have a major breakdown if I leave the US. She cannot drive and we are emotionally dependent on each other. Having been together for a long time, I do not think [REDACTED] will successfully adjust herself to my absence if I leave the United States.

Dr. [REDACTED] psychiatrist, indicated that she suffers from Bipolar Disorder and meta-carpal syndrome. [REDACTED] takes Depakene to stabilize her mood. She has received various treatments, including surgery, for ruptured tendons. [REDACTED] relies on Ohio Medicaid for her health care. In regard to the applicant's possible departure from the United States, Dr. Flanagan stated in an April 3, 2003 letter:

[REDACTED] husband is her primary support system and his departure would cause even more significant stress, which is counter indicated for a person with Bipolar Disorder. [REDACTED] husband helps her remember to take her psychotropic medications regularly to keep her stable. He helps with lifting heavy objects around the home and attending medical appointments, when she needs assistance getting home after a procedure. In addition, this couple has a very close emotional bond. If he has to go, not only will [REDACTED] lose someone who helps her with daily living skills, she will also lose her best friend.

It is known that excessive stress can make the symptoms of [REDACTED] mental disorder worsen. The loss of her husband would be considered a great stressor. Clearly, [REDACTED] departure would be associated with severe consequences to my patient's mental and physical well being.

The applicant completed his doctorate at Ohio State University in Columbus, Ohio in 2003. The applicant moved to College Station, Texas to work at Texas A&M University beginning June 1, 2003. Ms. [REDACTED] continues to live in Columbus, Ohio. The applicant indicated that he moved to Texas because was unable to find employment in Ohio. The applicant stated that Ms. [REDACTED] Social Security disability claim was approved

in Ohio on September 30, 2003. In a statement dated December 23, 2003, [REDACTED] explained why she stayed in Ohio:

I have Medicaid from Ohio and [REDACTED] salary is not enough to cover my medicine. In addition, my son [REDACTED] is a student at Upper Arlington High School, Columbus, Ohio. [REDACTED] received admission from Ohio State University in Columbus and cannot move to College Station. Therefore, I preferred not to move to College Station when [REDACTED] started to work at Texas A&M University on 6.1.2003.

Dr. [REDACTED] stated that the applicant is [REDACTED] primary support system and that separating the applicant and [REDACTED] would have severe mental and physical consequences, however, the record indicates that the applicant lives in Texas and [REDACTED] lives in Ohio. [REDACTED] chose to stay in Ohio with her son. She presumably would have moved to Texas with her husband if she believed the separation was unmanageable. [REDACTED] receives her medical care through Ohio Medicaid. Her adult son lives in Columbus and may be able to assist her with daily activities. The evidence in the record does not establish that [REDACTED] will experience exceptional hardship if she is separated from the applicant for two years

III. Conclusion

The AAO finds that the evidence in the record fails to establish that the applicant's wife would suffer exceptional hardship if she traveled to Turkey with the applicant. The AAO also finds that the evidence in the record fails to establish that the applicant's wife would suffer exceptional hardship if she remained in the United States while the applicant returned to Turkey.

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 his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.