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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Handwritten initials

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: **MAR 07 2005**

IN RE:

[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

Robert P. Wiemann, Director
Administrative Appeals Office

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 Pakistan. He was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on January 12, 1985 to attend Graduate School at the University of California at Berkeley. 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). The record reflects that the applicant married [REDACTED] (hereinafter [REDACTED] a United States citizen (USC), on July 1, 1989. The applicant and [REDACTED] have two United States Citizen children; [REDACTED] was born on July 31, 2002 and [REDACTED] was born on December 11, 2003. The applicant seeks a waiver of his two-year residence requirement in Pakistan, based on the claim that his wife and children would experience exceptional hardship if they moved to Pakistan with the applicant for the two years he is required to live there, or if they remained in the United States.

The Director concluded that the applicant submitted evidence to show that his USC spouse would suffer exceptional hardship if she accompanied him to Pakistan. The Director further concluded that the applicant failed to establish that an exceptional hardship would occur to his USC spouse if she remained in the United States. The application was denied accordingly. *Decision of the Director, California Service Center, Laguana Niguel, dated March 18, 2004.*

On appeal, Counsel contends that the Applicant is prima facie eligible for the requested waiver based on current law and evidence. In support of the appeal, counsel submitted a brief; [REDACTED] Declaration; birth certificates for the children; a psychiatrist report; a doctor's letter and medical reports concerning [REDACTED] letters from the applicant's pastor; a statement from the church congregation; certificates of baptism for the applicant and [REDACTED] a copy of a previously filed supplement in support of the original waiver application; a copy of a previously filed declaration for [REDACTED] the United States Department of State *International Religious Freedom Report 2002*; and articles addressing the persecution of Christians in Pakistan. 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 if [REDACTED] and the Children Accompany the Applicant to Pakistan

First analyzed is the potential hardship [REDACTED] will experience if she and the children relocate to Pakistan with the applicant for the two years he is required to live there. The Director concluded that [REDACTED] would experience exceptional hardship. Counsel asserts that the Service should have also considered the effects of forced relocation on the applicant's children.

[REDACTED] and the children have extensive family ties in the United States, including [REDACTED] elderly parents. The applicant and [REDACTED] are engineers and own an engineering business. The AAO finds that the combination of separation from family, disruption of the family business, and the potential danger to [REDACTED] and the children as Americans and Christians, constitutes exceptional hardship.

II. Potential Hardship if [REDACTED] and the Children Remain in the United States

Next examined is the potential hardship to [REDACTED] and the children if they stay in the United States during the two years the applicant is required to live in Pakistan. [REDACTED] stated in her declaration that she will accompany her husband to Pakistan because she will not choose to be separated from him. Counsel contends "it is unreasonable and unfounded for the Service to simply assume that she would not accompany her husband to Pakistan." As United States citizens, [REDACTED] and the children have a legal right to stay in the United States while the applicant fulfills his two-year residency in Pakistan, therefore the applicant must establish that [REDACTED] and the children will experience exceptional hardship if they accompany the applicant to Pakistan, or if they remain in the United States.

Counsel asserts that [REDACTED] and the children will suffer exceptional emotional hardship if they are separated from the applicant for two years. Dr. Nathan E. Lavid, a psychiatrist, prepared a psychiatric evaluation of the applicant and his family dated April 16, 2004. Dr. Lavin stated that [REDACTED] is already experiencing depressive thoughts and has difficulty concentrating and sleeping. Dr. Lavin concluded that if [REDACTED] is separated from the applicant, she will develop posttraumatic stress disorder and will be at risk for developing clinical depression. In regard to the children, Dr. Lavin stated:

The traumatic loss of the father and the risk to the father of serious harm and possible death in Pakistan would also predispose the children to the development of mental illness. The cognitive stage of the children does not allow them to grasp the full significance of the current situation, but they would recognize the abrupt loss of their father, which is considered a traumatic life experience. Children exposed to traumatic events suffer from depression, anxiety, have less awareness, are more isolative, and are slower to develop physical skills.

Dr. Lavin's evaluation is based on a single meeting with the applicant and his family. In addition to the interview, Dr. Lavin listed the sources of information that he reviewed; aside from [REDACTED] medical records and the Director's decision, all of the sources are general and do not specifically relate the applicant or his family. Dr. Lavin's lack of experience in treating the family raises questions about his diagnosis of their mental condition. As a psychiatrist, Dr. Lavin treats mental disorders, yet he stated "[T]here is no means by which to alleviate the effects of these hardships if [REDACTED] is to leave the United States." Dr. Lavin provided lengthy psychiatric descriptions of the symptoms of posttraumatic stress disorder and clinical depression, but he failed to mention available treatment options. In discussing the children, Dr. Lavin

provided no evidence to support his claim that a two-year separation from their father would cause the children to be predisposed to mental illness.

In an April 13, 2004 letter, Dr. Jeff Taylor, the children's pediatrician, stated:

It has come to my attention that the [REDACTED] family is facing immigration investigation. The children, [REDACTED] and [REDACTED] are my patients. Both children are healthy, "due in large part to the combined efforts of both father and mother."

Dr. Taylor does not indicate that [REDACTED] would be unable to adequately care for the children during a two-year absence of the applicant. The AAO notes that while it is generally preferable for children to have both parents present, counsel has not established that the temporary absence of the applicant would cause hardship beyond that which is normally associated with such a separation.

Counsel maintains that the absence of the applicant's income will result in the loss of the family's business, home, and medical insurance, resulting in dire economic conditions for the family. The record indicates that [REDACTED] is a civil engineer and that she and the applicant established an engineering business based out of their home. [REDACTED] stopped working to take care of the children. The family employs a full-time nanny. Counsel provided no evidence to establish that [REDACTED] cannot return to work as an engineer and support the family while the applicant is in Pakistan.

Counsel asserts that as a Christian, the applicant is at risk of persecution in Pakistan, and that this will cause Ms. Sheikh to experience anxiety. According to the United States Department of State *International Religious Freedom Report 2004*, Islam is the state religion of Pakistan, 96% of the population is Muslim, and the most recent census in Pakistan indicated that there are 2.09 million Christians. The Report indicated that discrimination against Christians is common, and that there have been some instances of more serious harm.

As a Christian, the applicant will face some risk while he is in Pakistan. The AAO finds that Ms. [REDACTED] anxiety concerning this general risk to the applicant does not constitute exceptional hardship.

III. Conclusion

The AAO finds that the evidence in the record establishes that the applicant's wife and children would experience exceptional hardship if they traveled to Pakistan with the applicant. The AAO also finds that the evidence in the record fails to establish that the applicant's wife and children would experience exceptional hardship if they remained in the United States while the applicant returned temporarily to Pakistan.

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.