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U.S. Citizenship
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MAR 08 2008

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FILE:

[Redacted]

Office: VERMONT SERVICE CENTER Date:

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 Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State Waiver Review Division (WRD).

The record reflects that the applicant is a native of Colombia. She was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on June 24, 2000 to pursue graduate medical training. 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's husband is a Colombian citizen, and that they have two United States Citizen children, [REDACTED] (born February 17, 2000) and [REDACTED] (born September 13, 2004). The applicant seeks a waiver of her two-year residence requirement in Colombia, based on the claim that her two children would suffer exceptional hardship if they accompany her to Colombia.

The Director found that the evidence submitted failed to establish that the applicant's departure from the United States would impose exceptional hardship upon her daughter. The application was denied accordingly. *Decision of the Acting Director*, Vermont Service Center, Saint Albans, Vermont, dated June 24, 2004.

On appeal, counsel contends that the applicant's United States citizen children will experience exceptional hardship if the family moves to Colombia for two years. In support of the appeal, counsel submitted a brief; a September 20, 2004 statement from [REDACTED] former United States Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support; a September 21, 2004 statement from [REDACTED] Director of International Studies and Human Rights Programs, University of Dayton; a 2004 United States Department of State Consular Information Sheet on Colombia; a 2004 United States Department of State Travel Warning on Colombia; various reports on Colombia from the United States Citizenship and Immigration Services (USCIS; formerly Immigration and Naturalization Service) Resource Information Center; a United Nations High Commissioner for Refugees (UNHCR) report on Colombian asylum seekers; and [REDACTED] birth certificate. 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 *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.)

At the outset, the AAO notes that the applicant and his wife have two United States citizen children; Isabela is four years old, and Gabriela is four months old. The applicant's husband is a citizen of Colombia and does not have legal status in the United States. If the applicant's waiver is denied, the entire family will have to move to Colombia. As it cannot be expected that two minor children would be left in the United States without their parents, this decision only addresses the potential hardship that the United States citizen children will experience in Colombia.

Counsel maintains that the applicant's children will experience exceptional hardship if required to live in Colombia for two years due to the violent and dangerous conditions in that country, the imminent threats of kidnapping and hostage-taking of the children or their parents, the exceptionally high level of crime and lawlessness that abounds through all parts of the country, and the daily fear and terror of attempting to guard against all these elements of violence in Colombia for two years. Counsel submitted a variety of documents addressing the dangerous conditions in Colombia.

Counsel submitted a statement in support of the applicant's waiver from [REDACTED] former Deputy Assistant Secretary of Defense, former White House Policy Advisor, and former Judicial Attaché at the United States Embassy in Bogota, Colombia. In her detailed analysis of country conditions in Colombia, Ms. [REDACTED] stated:

- 1) The March 3, 2004 *United States Department of State Travel Warning* specifically warns American citizens against travel to Colombia and points out that American kidnap or murder victims have included small children;
- 2) The August 11, 2004 *United States Department of State Consular Information Sheet* reported that since the year 2000, 28 American citizens, mostly dual nationals, were kidnapped. The Sheet further reported that American kidnap or murder victims have included journalists, missionaries, scientists, human rights workers, and even small children, and that kidnapping for ransom occurs more often in Colombia than in any other country and affects all parts of the country, especially rural areas;
- 3) The armed groups (FARC, ELN, and AUC) operate nationwide;
- 4) The most dangerous threat to United States citizens living in Colombia is common crime;
- 5) Colombia's per capita murder rate is about nine times higher than that of the United States;
- 6) Because of the applicant's above average standard of living, she and her children are more likely to be kidnapped and held for ransom by criminal organizations and guerilla groups;
- 7) The applicant is more likely to be targeted because she is medical doctor;
- 8) The applicant's mother-in-law was nearly kidnapped from her church, which was located in a well-to-do neighborhood in Cali. The applicant's father was abducted in Bogota because of his economic status. The applicant's sister, a medical doctor, was kidnapped by the guerillas and forced to provide medical care.
- 9) As a United States citizen, [REDACTED] is more likely to be targeted by guerilla groups and criminal organizations. Even if the family attempts to conceal [REDACTED] citizenship, guerilla groups and criminal organizations can discover it through intelligence gathering and bribery of public officials.

Ms. [REDACTED] concluded: "it is my professional opinion that if four-year-old [REDACTED] accompanies her mother Dr. [REDACTED] to live in Colombia, there are legitimate reasons to fear for the life, safety and well being of this minor U.S. citizen."

Counsel submitted a statement in support of the waiver application from [REDACTED] Ph.D., Director of the International Studies and Human Rights Programs at the University of Dayton. Dr. [REDACTED] stated that because the applicant's children are United States citizens, they are attractive targets for kidnapping and ransom demands from criminal and terrorist groups in Colombia. Dr. [REDACTED] explained that it would be relatively easy for these groups to identify the applicant's children as United States citizens; the applicant will have to produce the children's birth certificates for various administrative purposes, thereby disclosing their citizenship. Dr. [REDACTED] also asserted that the applicant is a more likely target because of her medical skills and higher position in society. Dr. [REDACTED] stated that the whole of Colombia is a dangerous area.

In addition to the above statements, the record contains numerous other reports and articles that refer specifically to the kidnapping of United States citizens and children. The August 11, 2004 *United States Department of State Consular Information Sheet* indicated that since the year 2000, 28 American citizens, mostly dual nationals, were reported kidnapped. The victims included small children. The March 3, 2004 *United States Department of State Travel Warning* stated that citizens of the United States continue to be the victims of threats, kidnappings, and other violence. The Warning further stated that most kidnappings of United States citizens in Colombia have been committed by terrorist groups such as the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). A January 3, 2000 *INS Resource Information Service Query Response* reported that the FARC maintains computerized databases of potential kidnapping and extortion victims, including people's citizen identification numbers, bank records and credit histories. A November 2003 issue of *Latin American Security & Strategic Review* indicated that 1,948 minors had been kidnapped over the past eight years, and that children are more likely to be kidnapping victims than businessmen. Various news articles reported that the rate of child kidnapping is on the rise in Colombia. Several news articles referred to the kidnapping of Americans. One article reported on the kidnapping of a 5 year-old American boy.

As dual nationals of Colombia and the United States, the applicant's children are at risk of being kidnapped. The applicant's socioeconomic status increases the risk that the children will be kidnapped and held for ransom. Attempting to protect them from this risk would involve extraordinary precautions and the preclusion of leading a normal life. Accordingly, the AAO finds the applicant has established that her United States citizen children will experience exceptional hardship if the family lives in Colombia for two years.

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 met her burden. The appeal will therefore be sustained. The AAO notes, however, that a waiver under section 212(e) of the Act may not be approved without the favorable recommendation of the Director, U.S. Department of State WRD. Accordingly, this matter will be remanded to the Director so that he may request a United States Department of State WRD recommendation under 22 C.F.R. § 41.63. If the United States Department of State WRD recommends that the application be approved, the application must be approved. If, however, the United States Department of State WRD recommends that the application not be approved, the application will be re-denied with no appeal.

ORDER: The record of proceeding is remanded to the Director for further action consistent with this decision.