

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

H3

**PUBLIC COPY**

[REDACTED]

FILE:

Office: NEBRASKA SERVICE CENTER

Date: JUL 18 2006

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, Chief  
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 citizen of Turkey 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 applicant was first admitted to the United States in J1 nonimmigrant exchange status on June 25, 1996 and is subject to the two-year foreign residence requirement. The applicant's spouse is a lawful permanent resident and his daughter is a U.S. citizen. The applicant presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to his spouse and daughter.

The director determined that the applicant failed to establish his spouse or daughter would experience exceptional hardship if he fulfilled the two-year foreign residence requirement in Turkey. *See Director's Decision*, dated May 4, 2005. The application was denied accordingly.

On appeal, counsel asserts that the decision contains errors of law as it did not give requisite attention to the evidence submitted and it wrongly concluded that the applicant did not establish exceptional hardship to his wife and to the public interest of the United States. *Form I-290B*, dated June 1, 2005.

The record includes, but is not limited to, counsel's brief, affidavits from the applicant and his spouse, case law and numerous letters of support. The entire record was considered in rendering this decision.

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,

(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 [now the Director, U.S. Department of State, Waiver Review Division (WRD), "Director"] 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, Department of Homeland Security (DHS), "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.

Counsel contends that the director's decision failed to mention hardship to the public interest of the United States. *See Brief in Support of Appeal*, at 2-3, dated June 1, 2005. The AAO notes that subsequent to a finding of exceptional hardship, the WRD director must recommend that the application be approved and then the DHS secretary may waive the two-year foreign residence requirement if admission of the applicant to the United States is found to be in the public interest. Counsel states that the case is incredibly strong due to the overwhelmingly proof of damage to the public interest of the United States. *Id.* However, the issue of public interest will not be addressed in this decision as exceptional hardship is the issue at hand. The case will be evaluated based on the factors related to exceptional hardship.

Counsel refers to the director's statement that disruption of the applicant's career "cannot be predicted with certainty" and contends that this is an improper standard. *Id.* at 3. The AAO notes that the appropriate standard is that departure from the United States would impose exceptional hardship upon the spouse or child, therefore, evidence must be submitted to meet this standard. Counsel's contention is based on this correct standard as he states that the applicant's spouse's career would be disrupted. *Id.* While the AAO does not disagree with the director it concedes that certainty is not necessary for a finding of exceptional hardship.

Counsel finds irrelevant the director's statement that in making a decision to have a child, he was aware of the two-year requirement. *Id.* at 8-9. Counsel asserts that having children in the United States is a fact of life and that it has never been held that hardship to U.S. citizen children counts only if they are "unplanned". *Id.* at 9. The AAO notes that the director appears to be making the point that the applicant had full knowledge of the two-year requirement and the anticipated hardships associated with it, not that it is "sinister" to have a child as counsel states.

Counsel contends that the service broke the law by failing to consider the totality of the circumstances and it distorted the facts by failing to discuss the issue of public interest. *Id.* at 14. The director's decision

discussed the relevant factors in the case and as mentioned previously, the issue of public interest is to be addressed upon the favorable recommendation of the WRD director.

Counsel finds fault with the director's citation of several cases as he contends that they are factually different from the instant case. *Id.* at 7-12. It does not appear that the director is stating that the facts of the cited cases are identical or even similar to the applicants, rather the cases are being referenced for some of the relevant considerations in exceptional hardship analysis. Counsel contends that the instant case is much stronger than *Silverman v. Rogers*, 437 F. 2d 102 (1<sup>st</sup> Cir. 1970), a case referenced by the director, as it did not involve children or strong hardships to the public interest of the United States. *Id.* at 8. This case involved the alien's spouse's medical issues as a basis for the initial INS (now CIS) approval. *Silverman v. Rogers*, at 103. The instant case does not involve medical issues and is not "clearly much stronger" as asserted by counsel. *Brief in Support of Appeal*, at 8.

The director lists a quote from *Orife v. Salturelli*, No. 5571229 (E.D. Mich Dec. 31, 1975) regarding creation of exceptional hardship through marriage to a U.S. citizen and counsel asserts that it plagiarizes a well-known case without citation and out of context.<sup>1</sup> *Id.* at 9. However, the quote from the director's decision is located in *Orife v. Salturelli* and this case was decided several years before the case which counsel contends is being plagiarized (*Keh Tong Chen v. Attorney General of the United States*, 546 F. Supp. 1060, 1064 (D.D.C. 1982)). Counsel then states that the quoted paragraph is from a Michigan federal judge's decision in 1975 in making an argument that the quote is dictum as opposed to law. *Brief in Support of Appeal*, at 9-10. Presumably, he is referring to *Orife v. Salturelli*. Furthermore, *Keh Tong Chen v. Attorney General of the United States* actually cites the disputed quote from *Orife v. Salturelli*. *Keh Tong Chen v. Attorney General of the United States*, at 1065. In spite of the inaccurate claim of plagiarism, counsel's assertion that the quote is made in the context of sham marriages appears accurate. *See id.*

Counsel also cites several cases which he contends are exactly on point with the case at hand. For instance, he states that *Matter of Hersh*, 11 I&N Dec. 142 (Dist. Dir. 1965) provides a legal basis for granting a waiver on the sole basis of career disruption. The AAO notes that the court in *Matter of Hersh* considered several factors including financial dependence on the alien, estrangement of the U.S. citizen spouse from his parents and career damage. *Matter of Hersh*, at 142-143. Counsel also cites *Matter of Savetmal*, 13 I&N Dec. 249 (1969) which differs from the instant case as it involved a lawful permanent resident spouse who was the only urologist in the community and who would be forced to start over again if he returned to the United States. Likewise, the other cases cited by counsel involve a convincing variety of factors not present in the instant case such as financial hardship, inability to obtain an exit permit to return to the United States, medical problems, deprivation of education for a war veteran and uncommon emotional hardship.

In *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals stated that, "Therefore, it must first be determined whether or not such hardship would occur as the consequence of her accompanying him abroad, which would be the normal course of action to avoid separation. The mere election by the spouse to remain in the United States, absent such determination, is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed. Further, even 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

---

<sup>1</sup>The quote in dispute is, "To allow aliens to create 'exceptional' hardship by marrying United States citizens would ignore the clear purpose of the statute." *Orife v. Salturelli*, at 7.

a problem many families face in life and, in and of itself, does not represent exceptional hardship as contemplated by section 212(e), supra.”

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).

The first step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship upon relocation to Turkey for two years. Counsel asserts that the application is approvable based solely on the factors of career disruption and damage to the U.S. public interest. *Brief in Support of Appeal*, at 2. The AAO will consider counsel’s claim of career disruption in its exceptional hardship analysis. The applicant states that his spouse would essentially be putting a full stop to a very productive career if she went to Turkey. *Applicant’s First Affidavit*, at 10, dated February 28, 2005. The record includes numerous letters attesting to her exceptional abilities and the importance of her work. Although the applicant’s spouse would be leaving a prestigious position, her remarkable background should increase the likelihood of obtaining a position in Turkey. The record indicates that there is opportunity in Turkey to achieve success in the fields of science and medicine. For example, the applicant’s spouse’s first affidavit indicates that both of her parents have had very distinguished careers in the fields of science and medicine. *Applicant’s Spouse’s First Affidavit*, at 1-2, dated February 28, 2005. The applicant’s spouse may not have an identical career to the one she has in the United States, however, it is plausible that she can engage in work of an important nature. Furthermore, the inability to engage in identical work is a common problem associated with relocation to a foreign country for two years. The record does not reflect that the applicant’s spouse’s career situation has caused or will cause exceptional emotional or financial effects. In addition, upon return to the United States the applicant’s spouse can continue to pursue prominent research.

The AAO notes that the applicant’s spouse is originally from Turkey and is therefore, familiar with the language and culture. Also, the applicant states that he and his spouse have very strong relationships with their families in Turkey. *Applicant’s First Affidavit*, at 10. Therefore, it does not appear that the applicant’s spouse will be facing emotional hardship or the common problems in dealing with a foreign culture. In addition, through counsel’s own admission this case does not involve dramatic medical dangers or political violence in the home country. *Brief in Support of Appeal*, at 2. Therefore, based on the evidence contained in the record, the AAO finds that the applicant has failed to establish that a qualifying relative would suffer exceptional hardship if she moved with him to Turkey.

The second step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional by remaining in the United States during the two-year period. Counsel asserts that the applicant’s spouse would have a hard time raising a child on her own while pursuing a medical career and without her

husband's support. *Attorney Cover Letter*, at 2, dated March 7, 2005. Counsel asserts that the applicant's spouse is one of the most brilliant, young scientific minds in the world, she has made important discoveries regarding the genetics of Alzheimer's Disease and her work would suffer if she were a single mother. *Id.* In regard to the emotional impact of separation, the applicant details the history of their relationship and how it has made them close. *Applicant's First Affidavit*, at 9. The AAO notes that separation entails inherent emotional stress and logistical problems which are common to those involved in the situation and although unfortunate, single parent households are not uncommon in the United States. In addition, there is no evidence that the applicant's spouse cannot find appropriate childcare while she is at work.

Counsel asserts that it is perverse and inhumane for the director to claim that a prior long separation establishes that the marriage has already survived that challenge, thus minimizing the effects of an additional long separation. *See Brief in Support of Appeal*, at 6. Counsel states that the separation would be worse now due to the distance, there is now an infant in the family and a previous AAO decision contradicts the director's statement on previous separation. *See id.* at 6. The AAO notes that the case cited by counsel found that the hardship from the prior separation was especially severe on the alien's daughter. *Matter of [Name Redacted]*, A 70-819-732 (AAO Apr. 25, 2001). The AAO notes that the cited case would be given weight to the applicant's daughter's situation if she had been subject to a lengthy, prior separation, however, the applicant's prior separation from his spouse was before their daughter was born.

In regard to the financial impact of separation, counsel states that it's doubtful that the applicant's spouse could continue to pay the mortgage. *Attorney Cover Letter*, at 2. The applicant lists their various expenses and the inability to cover these expenses. *Applicant's First Affidavit*, at 20. However, there is no substantiating evidence of financial hardship or evidence that they could not modify their financial situation to avoid hardship.

Counsel states that a two year separation would likely cause permanent psychological and developmental deficits in the applicant's daughter. *Attorney Cover Letter*, at 2. The AAO notes that without documentary evidence to support these claims, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant's spouse details the close bond between her husband and their daughter. *Applicant's Spouse's First Affidavit*, at 12. The AAO notes that separation entails inherent emotional stress which is common to those involved in the situation.

A thorough review of the record reflects that the applicant's spouse and daughter will face difficulties without the applicant, however, it does not demonstrate that exceptional hardship will be imposed on them during the two-year period.

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.