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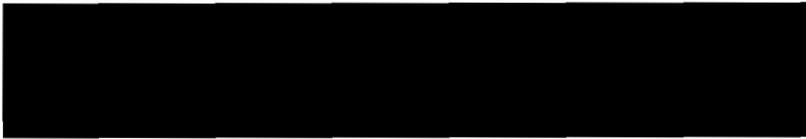
Date: OCT 02 2006

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 applicant is a native and citizen of Turkmenistan 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 admitted in J1 nonimmigrant exchange status on June 26, 1999.<sup>1</sup> The applicant presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to his U.S. citizen spouse.

The director determined that the applicant failed to establish his spouse would experience exceptional hardship if he fulfilled the two-year foreign residence requirement in Turkmenistan. *Director's Decision*, dated February 27, 2006. The applicant's waiver application was denied accordingly.

On appeal, the applicant asserts that his spouse needs his care during her pregnancy and post partum, she will suffer financial hardship and she must deal with the stress of not knowing whether he can return to the United States. *Form I-290B*, dated March 24, 2006.

The record includes, but is not limited to, the applicant's statement, the applicant's spouse's statement, letters of support, information on country conditions in Turkmenistan, a doctor's letter for the applicant's spouse and the applicant's financial documents. 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, Department of State Waiver Review Division] 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,

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<sup>1</sup> The applicant returned to Turkmenistan for eighteen months and reentered the United States on a K-1 fiancé visa on November 13, 2002. Therefore, he only has to return to Turkmenistan for six months to fulfill the two-year requirement.

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, 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.

The first step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship upon relocation to Turkmenistan for six months. Counsel contends that the applicant's spouse's medical condition makes it impossible for her to relocate to Turkmenistan. *Counsel's Cover Letter*, at 2, dated August 25, 2005. The doctor's letter indicates that the applicant's spouse is to be monitored every three to six months for her medical problem, squamous intraepithelial lesion. *Letter from* [REDACTED] dated August 12, 2005. Although the general medical conditions are poor in relation to the United States, there is no evidence that the applicant's spouse could not have the specific tests done as mentioned in the doctor's letter or that she could not return to the United States once during the required six months in order to be monitored.

Counsel contends that the applicant's spouse would be unable to obtain a visa to reside with the applicant. *Counsel's Cover Letter*, at 3. However, the record reflects that the applicant's spouse previously entered Turkmenistan on a work visa and there is no indication that she cannot receive a similar visa. Counsel also notes the social, political and economic problems in Turkmenistan and notes that relocation will result in career disruption and financial problems. *Id.* at 4. The AAO notes that adapting to a new culture is a normal result of joining a spouse who has been removed from the United States, as is adapting to a new financial situation. The record does not reflect hardship beyond that which would normally be expected.

Based on the evidence contained in the record, the AAO finds that the applicant has failed to establish that his spouse would suffer exceptional hardship upon relocation to Turkmenistan for six months.

The second step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship upon remaining in the United States during the six-month period. The applicant states that his spouse is pregnant through in-vitro fertilization, she needs many injections, she may be put on bed

rest and she needs his extensive care. *Letter in Support of Appeal*, at 1. The applicant states that they have spent \$80,000 for medical procedures and it will be difficult for his spouse to make the monthly mortgage and credit card payments without his financial contribution. *Id.* The AAO notes that the actual balance remaining for the medical procedures is not clear from the record, however, it appears to be only a small percentage of the original amount. In addition, the credit card minimal payment is only \$140. *American Express Payment Coupon*, dated February 21, 2006. The record does not include enough information on the applicant's spouse's financial state in order to determine if she can pay the mortgage amount for the six-month period.

The applicant states that his spouse must deal with the stress of not knowing whether he can return to the United States due to Turkmenistan's discriminatory policy towards its citizens working on democracy development and married to foreigners. *Letter in Support of Appeal*, at 1. Counsel states that the applicant is likely to be on the government blacklist due to his prior employment with an American NGO in Turkmenistan and his subsequent residence in the United States with his spouse. *Counsel's Cover Letter*, at 2. Counsel states that the applicant was previously interrogated and harassed by Turkmen officials on several occasions. *Id.* The AAO notes that the applicant's work with the NGO was several years ago and subsequent to the alleged interrogations and harassment, he was permitted by the government to exit on his fiancé visa. Therefore, it is plausible that he would be able to exit the country after the six-month period expires.

The record reflects that the applicant's spouse will face some difficulties in being separated from the applicant, however, the applicant has not established exceptional hardship to his spouse should she remain in the United States during the six-month period.

The burden of proving eligibility for section 212(e) relief rests with the applicant. *See Section 291 of the Act, 8 U.S.C. § 1361*. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.