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U.S. Citizenship
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FILE:

Office: NEBRASKA SERVICE CENTER

Date:

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 Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the matter will be remanded to the acting 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 citizen of Syria 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 to the United States in J1 nonimmigrant exchange status on September 10, 2000 and is subject to the two-year foreign residence requirement. The applicant's spouse 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.

The acting director determined that the applicant had failed to establish his spouse would experience exceptional hardship if he fulfilled the two-year foreign residence requirement in Syria. *Acting Director's Decision*, dated August 22, 2006. The application was denied accordingly.

On appeal, counsel asserts that applicant has established exceptional hardship to his qualifying relative. *Brief in Support of Appeal*, at 1, dated September 19, 2006.

The record includes, but is not limited to, counsel's brief, affidavits from the applicant and his spouse, case law, letters of support, medical letters and records, articles on several medical problems and information on country conditions in Syria. 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 asserts that several of the cases cited by the acting director are irrelevant as they are suspension of deportation cases, not J-1 waiver cases. *Brief in Support of Appeal*, at 11. The AAO notes that suspension of deportation cases require a finding of extreme hardship, whereas I-612 waivers require the lesser standard of exceptional hardship. Therefore, these cases are not precedent and the AAO will adjudicate the waiver based on relevant exceptional hardship case law.

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 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 acting director cited this case and counsel asserts that it includes a quotation from a 1961 congressional report which is out of context and has no relevance to the instant case. *Brief in Support of Appeal*, at 11. The AAO notes that the court in *Keh Tong Chen v. Attorney General of the United States* included this language in its 1982 decision and it is therefore included in precedent exceptional hardship case law.

The first step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship upon relocation to Syria for two years. Counsel states that the applicant’s spouse suffers from hypothyroidism, depression and several instances of basal cell carcinoma, and her medical conditions are exacerbated by psychological stress. *Brief in Support of I-612*, at 2, dated April 20, 2006. The record includes substantiating evidence of the medical problems of the applicant’s spouse. Her physician states that she has had four malignant basal cell carcinomas and requires lifetime surveillance, and that there is a high likelihood of development of future cancers. *Letter from Dr. [REDACTED]* dated September 10, 2006. The applicant’s spouse states that she must remain in the United States in order to treat her hypothyroidism, is currently taking antidepressants, sees a counselor every three weeks, has basal cell carcinoma and would likely lose her health coverage. *Applicant’s Spouse’s Statement*, at 5-8, dated March 27, 2006.

Counsel states that the applicant’s spouse would face the risk of disease, hardships of living in an economically depressed country and personal dangers based on politics, religion and the risk of war. *Brief in Support of I-612*, at 3. The applicant states that he would have to serve in the military, his salary would be nominal and that he would not be able to be with his spouse during some of the time he would be in the military. *Applicant’s Statement*, at 4, dated March 27, 2006. The applicant states that his spouse does not speak Arabic, the economy is declining, there are anti-American demonstrations and U.S. citizens are under scrutiny. *Id.* at 4, 6. The record includes a travel warning for U.S. citizens due to increased security concerns in Syria. *U.S. Department of State Travel Warning, Syria*, dated September 14, 2006. Lastly, the applicant’s spouse states that she currently has about \$30,000 in student loans. *Applicant’s Spouse’s Statement*, at 4. Based on the totality of the record, the AAO finds that the applicant’s spouse would suffer exceptional hardship if she resided in Syria for the two-year period.

The second step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship by remaining in the United States during the two-year period. Counsel states that the applicant’s spouse has been treated for depression after the breakdown of a long-term relationship and she would face hardship due to separation and worrying about the applicant’s safety. *Brief in Support of I-612*, at 2. The record includes numerous letters which detail that the applicant and his spouse are very close to each other and he has had a positive effect on her life. The applicant’s spouse states that her profession as an athletic trainer requires her to be in good mental health and her career would be disrupted. *Applicant’s Spouse’s Statement*, at 4. The social worker treating the applicant’s spouse states that she is experiencing a recurrence in her depressive disorder and a stable marriage will help her regain her health. *Letter from [REDACTED]*, LMSW, ACS, dated September 8, 2006. Based on the applicant’s spouse’s history of depression, these claims are plausible. Counsel states that the applicant faces in danger in Syria based on military service, interfaith marriage, his ties to the United States and dangers related to political instability in the Middle East. *Brief in Support of I-612*, at 2. The applicant’s spouse states that she would fear for the applicant’s life in

Syria and it is not guaranteed that he would be allowed to return based on strained U.S. relations with Syria. *Applicant's Spouse's Statement*, at 8. A thorough review of the record reflects that exceptional hardship would be imposed on the applicant's spouse if she remained in the United States 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 met his 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 WRD. Accordingly, this matter will be remanded to the acting director so that he may request a WRD recommendation under 22 C.F.R. § 514. If the WRD recommends that the application be approved, the 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. However, if the WRD recommends that the application not be approved, the application will be re-denied with no appeal.

ORDER: The appeal is sustained and the record of proceeding is remanded to the acting director for further action consistent with this decision.