

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



H3

FILE:



Office: CALIFORNIA SERVICE CENTER

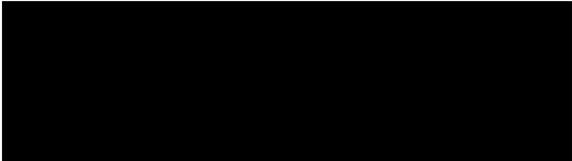
Date: SEP 25 2007

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 that reads "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 Egypt 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 J2 nonimmigrant exchange status on October 31, 1997. The applicant's spouse is a U.S. citizen and the applicant presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to his spouse. The applicant also seeks a waiver of the two-year foreign residence requirement based on religious persecution.

The director found that the applicant failed to establish that his spouse would experience exceptional hardship if he fulfilled the two-year foreign residence requirement in Egypt or that he would be subject to persecution on account of race, religion or political opinion if he returned to Egypt. *Director's Decision*, dated October 11, 2005. The applicant's waiver application was denied accordingly.

On appeal, counsel asserts that the director misapplied controlling asylum law, failed to consider the petitioner's equities and failed to consider the damage the denial would have on the applicant's spouse. *Form I-290B*, received March 19, 2007.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement and the applicant's statement. 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, 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.

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*. (Quotations and citations omitted).

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 exceptional hardship would be imposed on the applicant's spouse if she moved with the applicant to Egypt. The record does not include evidence to establish this prong of the analysis. Therefore, the AAO finds that exceptional hardship would not be imposed on the applicant's spouse if she moved with the applicant to Egypt.

The second step required to obtain a waiver is to establish that exceptional hardship would be imposed on the applicant's spouse if she remained in the United States during the two-year period. Counsel states that depriving the applicant's spouse of the applicant would cause irreparable harm and damage. *Brief in Support of Appeal*, at 3, dated March 17, 2007. Counsel states that few people have such an open communication in their marriage. *Id.* The applicant's spouse states that she has the same religion as the applicant, she thinks the same as he does, her family and friends like him, he is the protection she needs and he makes her happy. *Applicant's Spouse's Statement*, at 1-4, undated. The AAO notes that separation commonly entails emotional stress and financial and logistical problems. As there is no other evidence in the record that addresses this prong of the analysis, the AAO finds that exceptional hardship would not be imposed on the applicant's spouse if she remained in the United States during the two-year period.

In regard to the claim of persecution, counsel states that the applicant was the victim of rape, that this has dire consequences for him and that he can be killed with impunity. *Brief in Support of Appeal*, at 3. The applicant states that he was attacked as a young man by a neighbor who was yelling that Muslims are stronger than Christians. *Attachment to Form I-612*, dated April 10, 2006. The applicant details harassment in Egypt due to his religion, negative comments made about his religion, physical abuse of himself and his friends, emotional distress and his addiction to medication, psychiatric treatment and death threats. *Applicant's Statement*, at 1-12, undated. The record does not include substantiating evidence of these claims of past persecution. Therefore, there is no rebuttable presumption of future persecution as asserted by counsel. In addition, the AAO notes that the legal standard "would be subject to persecution" is higher than the "well-founded fear" legal standard in asylum cases. After a thorough review of the record, the AAO finds that the applicant has failed to establish that he would be subject to persecution on account of his religion.

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