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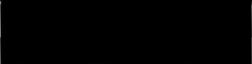
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

APR 03 2008

IN RE:



APPLICATION:

Application for Waiver 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.

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 matter will be remanded to the Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State (DOS), Waiver Review Division (WRD).

The record reflects that the applicant, a native and citizen of Lebanon, was admitted to the United States as a J-1 exchange visitor in June 2001 to participate in graduate medical training. He is thus 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 presently seeks a waiver of his two-year residence requirement, based on the claim that his U.S. citizen spouse, and his U.S. citizen child born in April 2007, would suffer exceptional hardship if they moved to Lebanon temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Lebanon.

The director determined that the applicant failed to establish that his spouse and child would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Lebanon. *Director's Decision*, dated August 8, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated September 6, 2007; a letter from the applicant, dated August 16, 2007; a letter from the applicant's spouse, dated August 15, 2007; two previously issued decisions from the AAO; case law with respect to waivers; a copy of an article about hardship waivers; and evidence of previously approved Form I-612 applications for Lebanese citizens subject to the two-year foreign residence requirement. In addition, on November 19, 2007, counsel sent a correction notice with respect to the appeal brief. The entire record was reviewed and 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 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."

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 establish that the applicant’s spouse and/or child would experience exceptional hardship if they resided in Lebanon for two years with the applicant. To support this contention, the applicant’s spouse states the following:

... We have always shared a dream in growing as a family and raising our children **in a safe and healthy environment where they can fulfill their potential and become lawful citizens and honest human beings.** [the applicant] has had a very traumatic experience as a child growing amidst the horrible Lebanese civil war when his family was persistently forced to evacuate their home and flee for their lives.... Lebanon has passed through many phases and a bright future was highly anticipated.... Since the time I met Kamal, we have decided to go back to Lebanon and raise our family there. Unfortunately, a series of bombs and assassinations, most notably of the ex Prime Minister Mr. R. Hariri, has stricken Lebanon heavily....the war which erupted last year between Hezbollah and Israel affected us deeply and made us really fearful about our lives and the future of our child should we move there. Witnessing the war on live TV and the widespread coverage of newspapers was traumatic by itself. However, being in the center of the tragedy like the case of my mother and sister, among a large number of Americans, who were stuck in Lebanon during war time without food, water or a safe shelter and with a high potential of loosing their lives made me realize the harsh truth that Lebanon is not a suitable place for us to raise a family.... The growing instabilities in Lebanon represented in violence and multiple fights in the streets of Beirut which are very reminiscent of the ugly civil war, snipers shooting civilians, the high level of political tension, the rising level of Anti American sentiments and the fast growth of extremists and terrorists have made the country a very dangerous place for any American family or to anybody with ties to America....

Letter from [redacted] dated August 15, 2007.

The applicant further outlines the hardships that his wife and child would face were they to relocate to Lebanon:

... [redacted]’s [the applicant’s spouse’s] parents were born in Lebanon. Her father immigrated to the United States in the late 1960’s and her mother in the late 1970’s. [redacted] was born and raised in the United States and has never visited Lebanon. She knows some Lebanese Arabic, i.e., the slang Lebanese form of the Arabic language, due to her contacts with her parents, but she mostly speaks English. She cannot write or read in Arabic and does not understand formal Arabic, the language needed for any job related or school related activity, and

thus it would be nearly impossible for her to compete to find and maintain a job in Lebanon. She has two brothers and two sisters, all born and raised in the United States. It would be very difficult for her to leave her family for two years....

...The risk of harm to the family is extremely elevated due to the increasing negative opinion of the United States in Lebanon, mainly in the regions where I used to live before I moved here for my medical training. The negative opinion has also increased because of the war between Israel and Hezbollah that occurred in July-August 2006....In addition, there is a high political tension in the whole country, which has made its way deeply among the young Lebanese generation...Furthermore, [REDACTED] will be unable to cope with the dramatic cultural difference due to her lack of exposure and due to cultural differences in her U.S. upbringing and the U.S. way of live. She may also be discriminated against, and can be, with the baby, at a major risk of being harmed or kidnapped....

Affidavit of [REDACTED], M.D., dated May 18, 2007.

Moreover, a Travel Warning, issued by the U.S. Department of State, Bureau of Consular Affairs, dated October 17, 2007, states the following:

This Travel Warning updates information on security threats and ongoing political tensions in Lebanon, and advises U.S. citizens of current safety and security concerns. The Department of State continues strongly to urge that Americans defer travel to Lebanon and that American citizens in Lebanon consider carefully the risks of remaining. This Travel Warning supersedes the Travel Warning issued on June 14, 2007.

The U.S. remains concerned about the threat of terrorist attacks against Western and Lebanese government interests in Lebanon. Groups such as Al-Qaeda and Jund al-Sham are present in Lebanon, and they have issued statements calling for attacks against Western interests. The Department of State also is concerned that the clashes between terrorist extremists and the Lebanese Armed Forces that occurred in the Nahr al-Bared refugee camp in northern Lebanon from May to September 2007 could occur in other camps in Lebanon. U.S. citizens who visit refugee camps in Lebanon risk becoming trapped during hostilities.

Two anti-Syria Members of Parliament were assassinated in separate car bombings in Beirut -- Walid Eido on June 13, 2007, and Antoine Ghanem on September 19, 2007. Others were killed and injured in both incidents, including innocent bystanders.

On June 7, 2007, a bomb exploded in the town of Zouk Mousbeh, north of Beirut. This followed the discovery of explosive-laden vehicles in Eastern Lebanon. Since May 20, explosions have occurred in the Beirut neighborhoods of Achrafieh and Verdun, the Beirut suburb of Sad Al-Bouchrieh, and the resort town of Aley.

The Department of State urges U.S. citizens to defer travel to Lebanon, and that U.S. citizens already in Lebanon carefully consider the risks of remaining. U.S. citizens who choose to remain in Lebanon are encouraged to maintain a high level of vigilance; confirm and maintain the validity of their passports and other U.S. travel documents for themselves and their family members; monitor the local security situation and be ready to depart quickly in the event of any deterioration in the situation.

U.S. citizens traveling to Lebanon or resident in Lebanon should be aware the U.S. Embassy has limited ability to reach all areas of Lebanon. The Embassy cannot guarantee that Embassy employees can render assistance to U.S. citizens in areas where there is little or no government control, such as the southern part of Lebanon where Hizballah continues to be active.

In a crisis situation, U.S. citizens are responsible for arranging commercial or private means of transportation to depart Lebanon. If evacuation is warranted, only when all other transportation options are unavailable will the U.S. government assist U.S. citizens in leaving a country. This service will be provided on a cost-recovery basis, which means the traveler must reimburse the U.S. government for the cost of the travel. The lack of valid travel documents will slow the U.S. embassy's ability to provide assistance. Further information on the department's role during emergencies is provided at http://www.travel.state.gov/travel/tips/emergencies/emergencies_1212.html.

The Department of State considers the threat to U.S. government personnel in Beirut sufficiently serious to require them to live and work under strict security restrictions. These practices limit, and may occasionally prevent, access by U.S. Embassy officials to certain areas of the country. Unofficial travel to Lebanon by U.S. government employees and their family members requires prior approval by the Department of State.

Landmines and unexploded ordnance pose significant dangers throughout southern Lebanon, particularly south of the Litani River, as well as in areas of Lebanon where civil war fighting was intense. More than a dozen civilians have been killed and over 100 injured by unexploded ordnance following the armed conflict in July-August 2006. Travelers should watch for posted landmine

warnings and strictly avoid all areas where landmines and unexploded ordnance may be present.

Travel Warning, U.S. Department of State, Bureau of Consular Affairs, dated October 17, 2007.

Numerous documents have been provided to support the assertions made by the applicant and his spouse with respect to Lebanon's problematic political, social and economic conditions and safety concerns for U.S. citizens residing in Lebanon. As such, based on the U.S. Department of State's position on travel by Americans to Lebanon, the social and political turmoil in Lebanon, anti-American sentiment, and the concerns outlined above regarding the language barrier, long-term separation from her family members, and complete unfamiliarity with the country and its customs as the record indicates she has never even visited Lebanon, the AAO concurs with the Director that the applicant's U.S. citizen spouse and child would experience exceptional hardship were they to accompany the applicant to Lebanon for a two-year term.

The second step required to obtain a waiver is to establish that the applicant's spouse and/or child would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in Lebanon. As stated by the applicant's spouse,

...The Psychological and emotional hardship that me and my son [REDACTED] would experience should [REDACTED] be forced to go to Lebanon is far from being just a normal separation of a husband and father from his family for at least 2 years....our situation is complicated by the dangers imposed on [REDACTED]'s life by the inherent nature of the flow of events in the Middle East and mostly in Lebanon. The case of an abnormal though acceptable temporary separation might not hold as [REDACTED] might lose his life or get injured badly should another war erupt between Hezbollah and Israel....

Other reasons for the exceptional case include exceptional financial hardship as [REDACTED] is currently the sole provider for our family and with his relocation, My son and I will suffer greatly as a result of the major expenses that we have including our house payments, school loans, the loans we have used to buy, fix and furnish our house.... In addition, this will result in the disruption in my education and thus my career. While the claim that some individuals can work and go to school can hold for few individuals with only parts of the hardships that I will have in case of [REDACTED]'s relocation, but taken together I find it very hardly convincing that I, a fresh graduate with no work experience, will be able to find a job in a timely manner, a job that can cover my monthly payments, let alone repaying my loans and cover my house payments, and be still able to raise my child in a normal manner. In addition, I am a human being with feelings and fears; I have lived in a traumatic experience during last year's war and thus will normally be affected by the course of events in Lebanon and with my husband being there, this will definitely affect my concentration and abilities to work or to study like any normal

human being.... Furthermore, the growth and development of my son Ali will definitely be affected by the presence of such a lonely environment....

Supra at 1, 4.

The applicant's spouse further states,

...One day that I wish I could forget, however it is imprinted in my memory, was one of the days of severe bombing to the city of Tyre, where my mother and [redacted] [the applicant's spouse's sister] were hiding in one building basement with some relatives.... My sister and I were talking to my mother, while clearly hearing the loud bombs and guns shooting in the background, and then a loud explosion was heard, accompanied by a sudden scream from my mother and then her voice disappeared. At that point, the phone went dead and we did not hear from her at all. I couldn't believe what happened so I broke into tears and started screaming uncontrollably. At the same time, the TV news was showing the fresh images of a building that was totally destroyed with one of those big bombs. I did not know what had happened and whether my mother and my sister were okay or injured in that attack or that falling building. I tried calling so many times and I could not get a response. I was so scared and worried and I stayed in a state of shock for a complete hour until we were able to reach them again. We later learned that they escaped death by being in the adjacent building and that my mother fell on the ground as a result of the huge bomb. They started running afterward to another hideout in the city.

After that incident, I couldn't sleep, eat, or go to school without being stressed. At the time this incident happened, I could not help but think about my maternal grandmother who died in the previous Lebanese war when she was fleeing for her life, trying to escape a war zone. I got scared and worried as I didn't want to lose my mom or my sister in the same way. My mind was always on the TV, watching the news and wondering if the war would ever stop, or if my mother, my sister, and all of my other relatives would make it safely back to the United States. They remained there for a while and after the food and water supply ran out, my mother made the risky decision to leave the area at all costs. She risked her life and spent several hours in the streets maneuvering to make it to Beirut. They were evacuated later on by the American ships that were specifically sent to the Middle East for that purpose....

...For [redacted] [the applicant] to be forced to return to Lebanon would be very hazardous to his life. I will be unable to sustain another trauma to my psyche. The fear of losing my mother and sister have made me more and more attached to my husband. I realize the importance of human life and the ease with which it can be lost with irreversible effects on the family left behind. I need to have my

full concentration towards my baby's care who definitely needs all of my attention. In addition, I have to be able to maintain my scholarly activities and stay focused on my planned career....

...Very important also will be [REDACTED]'s absence in the early and delicate stages of growth and development of our child, which can create harmful effects on the baby's emotional, developmental, and psychosomatic progress. Our child needs to have as much support and comfort as possible from both parents....

Affidavit of [REDACTED]; dated May 18, 2007.

Due to the applicant's spouse's fears and anxieties with respect to her spouse's anticipated return to Lebanon, a country of political and social turmoil, in light of the trauma she experienced when her own mother and sister were in Lebanon in 2006 and were almost killed, the applicant's child's need to be with both his mother and father, and the applicant's spouse's and her child's dependence on the applicant for their emotional, psychological and financial well being, the AAO finds that the applicant's departure for a two-year period would cause the applicant's spouse and child emotional, psychological and financial hardship that would be significantly beyond that normally suffered upon the temporary separation of families.

As such, upon review of the totality of the circumstances in the present case, the AAO finds the evidence in the record establishes that the applicant's spouse and child would experience exceptional hardship were they to relocate to Lebanon and in the alternative, were they to remain in the United States without the applicant, for the requisite two-year term.

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 DOS. Accordingly, this matter will be remanded to the director so that she may request a DOS recommendation under 22 C.F.R. § 514. If the DOS 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 DOS recommends that the application not be approved, the application will be re-denied with no appeal.

ORDER: 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.