

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

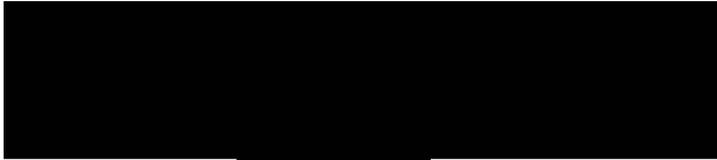
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



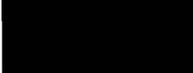
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

#3



FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

**APR 03 2008**

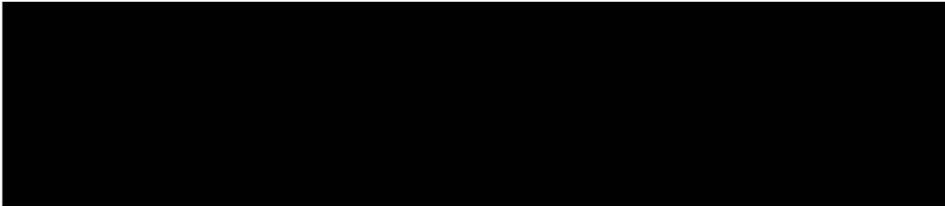
IN RE:



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.

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 record reflects that the applicant is a native and citizen of Lebanon who was admitted to the United States in J-1 nonimmigrant exchange visitor status in 2002 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).<sup>1</sup> The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his two U.S. citizen children, born in July 2006 and December 2004, 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 children would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Lebanon. *Director's Decision*, dated September 12, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated October 9, 2007; an affidavit from the applicant, dated October 2, 2007; two previously issued decisions from the AAO; and case law and an article about hardship waivers. 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

---

<sup>1</sup> The AAO notes that no evidence has been provided to establish the applicant's spouse's current status, if any, in the United States.

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 children would experience exceptional hardship if they resided in Lebanon for two years with the applicant. To support this contention, the applicant states the following:

...The July-August conflict involving Israel and the terrorist organization Hezbollah erupted on July 12.... The conflict killed over a thousand people, most of whom were Lebanese, severely damaged Lebanese infrastructure, displaced nearly 975,000 Lebanese and 300,000 Israelis and disrupted normal life across all of Lebanon and northern Lebanon. Even after the ceasefire, much of Southern Lebanon remained uninhabitable due to unexploded cluster bombs. As of December 2006, an estimated 200,000 Lebanese remained internally displaced or refugees.

...Due to several factors, including internal political differences and lack of capacity on the part of its security forces, the government has not taken the necessary steps to disarm extralegal armed groups, including Hezbollah. The August 2006 Conflict has shattered the lives of civilians in Lebanon....

I cannot bear the thought of bringing my children back to a war torn nation where tensions run so high that another conflict could spark at any moment. Given the sobering number of civilian casualties and the direct targeting of civilians during the August 2006 Conflict, I strongly fear for the lives of my family if we were indeed made to return to southern Lebanon. A waiver of the two year foreign residency requirement would permit me to remain in the United States with my family and avoid subjecting my U.S. citizen children to the utter hardship that comes with the civil strife and war ravaged turmoil in my native land.

Unexploded munitions post a serious problem.... There remains a significant threat of danger to civilians....

I am from Southern Lebanon, Ghazieh (near Saida) where the political climate remains significantly unstable and dangerous. During the 2006 Conflict, my village was hit multiple times and sustained many casualties. The entire region is living with the fear that another violent conflict could ensue at any moment. There still remain thousands of unexploded bombs in our area which could explode at anytime. I cannot even think of the horror associated with my U.S. Citizen children living and playing in an area that is covered with unexploded Israeli munitions....

In the area where I am from, there are large numbers of people who oppose the United States. Many of them blame the United States for helping Israel fight against them as well as not opposing the continuous Israeli bombings during the August 2006 Conflict. My children were both born and raised in the United States. I strongly believe that they will be treated as United States Citizens and not as Lebanese. This fact alone may subject my children to real emotional and even physical danger. This is hardship that they should not be made to suffer....

...I fear my children will experience 'culture shock' and this could very well impact their personalities and developmental well being. In Lebanon, religious discrimination is very common everywhere. This discrimination will have a tremendous bad effect on their religious ideas and behavior. We like to teach our children our real religion in the right way. We like to teach them how to be open and accept other religions.... It might be much more difficult to do so while living in my country due to the influence of the media, the friends and the school....

The education in Lebanon in general and especially in my area (South Lebanon) is very weak. They don't use the right and the modern educational methods (e.g. computers are rarely used in our school). They put too much pressure on the student.... Violence is sometimes used against the students which might have a serious negative effect on their personalities and their future. English language is very weak in South Lebanon's schools, which will affect my children's future if they decided to come back to the US for higher education and living....

Pollution is a significant problem.... The entire environment is at risk for water, air and even food contamination. Just 3 miles north of our village, there is a huge 'mountain of garbage' on the beach, that places a very serious risk for health consequences....

*Affidavit of* [REDACTED] dated May 14, 2007.

To corroborate the above, counsel has provided a number of articles regarding the problematic political and religious situation in Lebanon. Moreover, counsel has provided a Travel Warning, issued by the U.S. Department of State, Bureau of Consular Affairs, dated October 17, 2007, stating 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](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.*

Based on the political and religious turmoil in Lebanon and the security concerns referenced above, the AAO finds that the applicant's U.S. citizen children 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 children would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in Lebanon. No documentation has been provided to address this prong of the hardship waiver analysis, as required by *Matter of Mansour, supra*. As such, the record, reviewed in its entirety, does not support a finding that the applicant's children will face exceptional hardship if the applicant's waiver request is denied. Although the AAO finds that the applicant has established that his two children would experience exceptional hardship were they to relocate to Lebanon for a two-year period, it has not been established that the applicant's children would suffer exceptional hardship if they remained in the United States while the applicant relocated for the requisite 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. The waiver application is denied.