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U.S. Citizenship  
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FILE:

Office: CALIFORNIA SERVICE CENTER

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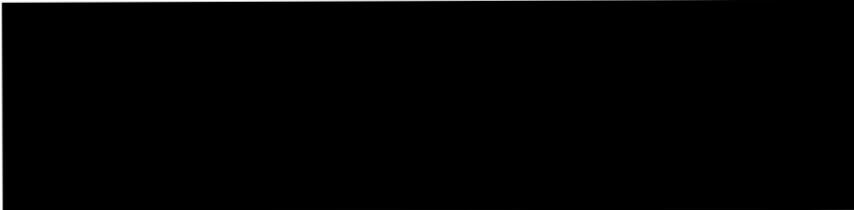
IN RE:



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 appeal will be dismissed.

The record reflects that the applicant, a native of Iran and a citizen of Canada, obtained J1 nonimmigrant exchange status in October 1993 to participate in graduate medical training. She 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 her two-year foreign residence requirement, based on the claim that her lawful permanent resident child, born in March 1987, would suffer exceptional hardship if he moved to Iran temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled her two-year foreign residence requirement in Iran.

The director determined that the applicant failed to establish that her child would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Iran. *Director's Decision*, dated May 4, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated June 22, 2007 and additional documentation relating to conditions in Iran. 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 child would experience exceptional hardship if he resided in Iran for two years with the applicant. To support this contention, the applicant states the following:

...In 1992, my husband and I obtained a divorce in the State of Florida. According to the divorce decree, I obtained sole custody of my son Arash. This marriage ended in bitter acrimony, and there is still a great deal of animosity between my ex-husband and me. Although [redacted] [the applicant's ex-husband] has since remarried, he has not given me a divorce according to Islamic law or Sharia law. Therefore, under Islamic law and Iranian law, I am still married to my ex-husband, as a divorce in United States is not recognized in Iran.

My son, [redacted], would suffer exceptional hardship under a number of circumstances if my family were forced to move to Iran. The extreme cultural difference between Iran and the West will cause an exceptional hardship to my son. Moreover, if my son moved to Iran for 2 years, he would be forced to conscript into the military as is required by Iranian law. Because of my status as a woman who is married but not living with her husband, my son may be subject to ridicule and discrimination because of his association with me. The sharp rise in anti-American sentiment in Iran would pose a psychological and physical threat to my son. Also, Iran is politically unstable, and there are frequent terrorist attacks on civilian targets....

Sharia or Islamic Law is the basis of the law in many Islamic Countries....The Islamic Republic of Iran follows Sharia Law very closely, and the Mullahs are the ultimate legal authority in Iran....

There are severe restrictions in many facets of life, including the ability of unmarried men and women to interact freely. My son is fully accustomed to the free American way of living in which no such restrictions exist. Being subjected to this extremely culturally restrictive and oppressive environment will cause Arash great hardship....

Farsi is the language spoken in Iran and Arash speaks very little Farsi. More importantly, he cannot read or write in Farsi...If he were to return to Iran with me, he would not be able to continue his college education. Education in Iran is based on Farsi. The entrance exams as well as all other course work would be mainly in Farsi. He will alternatively not be able to get a job due to this language barrier. In fact, it will be a great struggle for him to adjust to a non-English speaking society. He will be discriminated against as well as ridiculed for his inability to speak the native language....

Iran has mandatory military service for men. My son, being 19 years old, is required to join the Iranian Military....Once my son enters Iran, he must get an 'Exit Seal' from the government in order to leave the country. To get this Exit Seal, a person needs to show that the conscription was fulfilled. In the alternative, for a person living abroad for 2 years or more, one is allowed to get the Exit Seal once each year until January 24, 2007. However, the residing period in Iran cannot exceed three months. This means that if my son returned to Iran for 2 years, he would not be allowed to leave the country without fulfilling his military obligations....

...My son does not consider himself to be Iranian. He does not support the Iranian government and has no ties with Iran. He considers himself to be both Canadian and American. Moreover, he does not speak Farsi and he does not believe in Islamic faith. He does not want to join the military in Iran. If he were forced to join the military service against his will, he would be ostracized, ridiculed and discriminated against by the other soldiers. I also fear that my son will be made an example of because of his close ties with the West. If my son refuses to conscript, he can be jailed and tortured....

As a married woman without her husband, my son will be considered my male guardian. However, because he is not familiar with the culture, does not speak the language or know the laws in Iran, I can still be an easy target for predatory men....My son will have the unimaginable burden of trying to protect me in a society and culture he does not understand. My son will not be able to have a life of his own because he knows I would be under constant threat of harassment....

My son and I do not practice or follow the teachings of Islam. We consider ourselves to be Agnostic. Due to this fact, I fear that we will be targeted, arrested and tortured by the government. Religious tolerance does not exist in Iran....Once we reach Iran, neither my son nor I will attend the mosque or participate in any religious festivals or holidays. If we do not forgo our personal beliefs, my son will suffer....He may be targeted for violence and be harassed for being Agnostic. He will not be able to defend himself given his limited ability to speak Farsi.....

American involvement in the Middle East and South & Central Asia has inspired hatred of the United States amongst many people in the regions, and especially in Iran....

...The nature of the communities in Iran would make it impossible for me to conceal the fact that I have spent time in the United States and Canada, and I would surely be singled out....My son would most certainly be singled out as well. Because he cannot speak, read, or write Farsi adequately, he will not be able to

hide that he is foreign to Iran....He will surely be targeted for Anti-American harassment....

My son will not be able to gain employment in Iran because he has not completed his college education nor does he speak Farsi. If neither of us is able to gain meaningful employment, we will not be able to financially survive in Iran....

*Affidavit of* [REDACTED], dated November 27, 2006.

Counsel has provided numerous articles about country conditions, military conscription, and anti-American sentiment in Iran to corroborate the above statements. In addition, an updated Travel Warning was issued on January 3, 2008 with respect to Iran. As stated by the Bureau of Consular Affairs, U.S. Department of State,

The Department of State continues to warn U.S. citizens to carefully consider the risks of travel to Iran. Dual national Iranian-American citizens may encounter difficulty in departing Iran. This Travel Warning supersedes the Travel Warning for Iran issued May 31, 2007.

Some elements of the Iranian regime and the population remain hostile to the United States. As a result, American citizens may be subject to harassment or arrest while traveling or residing in Iran. Recently, Iranian authorities prevented a number of Iranian-American citizen academics, journalists, and others who traveled to Iran for personal reasons from leaving for several months, and in some cases detained and imprisoned them on various charges, including espionage and posing a threat to national security. Americans of Iranian origin should consider the risk of being targeted by authorities before planning travel to Iran. Iranian authorities may deny dual nationals access to the United States Interests Section in Tehran, because they are considered to be solely Iranian citizens.

The Iranian regime continues to repress its minority religious and ethnic groups, including Bahai, Arabs, Kurds, Azeris, and others. Consequently, some areas within the country where these minorities reside, including the Baluchistan border area near Pakistan and Afghanistan, the Kurdish northwest of the country, and areas near the Iraqi border, remain unsafe. Armed attacks on the road between Bam and Kerman in May 2007 also render this area unsafe.

Large-scale demonstrations have taken place in various regions throughout Iran over the past several years as a result of a sometimes volatile political climate. U.S. citizens who travel to Iran despite this Travel Warning should exercise caution.

The U.S. government does not have diplomatic or consular relations with the Islamic Republic of Iran and therefore cannot provide protection or routine consular services to American citizens in Iran. The Swiss government, acting through its Embassy in Tehran, serves as protecting power for U.S. interests in Iran. Neither U.S. passports nor visas to the United States are issued in Tehran. The Iranian Government does not recognize dual citizenship and generally does not permit the Swiss to provide protective services for U.S. citizens who are also Iranian nationals. U.S. citizens of Iranian origin who are considered by Iran to be Iranian citizens have been detained and harassed by Iranian authorities. Former Muslims who have converted to other religions, as well as persons who encourage Muslims to convert, are subject to arrest and prosecution.

*Travel Warning-Iran, Bureau of Consular Affairs, U.S. Department of State, dated January 3, 2008.*

Furthermore, the Bureau of Democracy, Human Right and Labor states the following, in pertinent part, regarding human rights in Iran:

The government's poor human rights record worsened, and it continued to commit numerous, serious abuses. The government severely limited citizens' right to change their government peacefully through free and fair elections. There were reports of unjust executions after unfair trials. Security forces committed acts of politically motivated abductions; torture and severe officially-sanctioned punishments, including death by stoning; amputation; flogging; and excessive use of force against and imprisonment of demonstrators. Vigilante groups with ties to the government committed acts of violence. Prison conditions remained poor. Security forces arbitrarily arrested and detained individuals and held political prisoners and women's rights activists. There was a lack of judicial independence and of fair public trials. The government severely restricted civil liberties, including freedoms of speech, press, assembly, association, movement, and privacy. The government placed severe restrictions on freedom of religion. Official corruption and a lack of government transparency persisted. Violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and incitement to anti-Semitism remained problems. The government severely restricted workers' rights, including freedom of association and the right to organize and bargain collectively, and child labor remained a serious problem. On December 18, for the fifth consecutive year, the UN General Assembly adopted a resolution expressing "deep concern at ongoing systematic violations of human rights.

*Country Report on Human Rights Practices-Iran, released by the Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, March 11, 2008.*

The record indicates that the applicant's child is integrated into the U.S lifestyle and educational system. He has never lived outside the United States and he would not be able to speak, read or write in the native language. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's child at this stage of his education and social development and relocate him to Iran would be a significant disruption that would constitute exceptional hardship. In addition, the applicant's child would experience exceptional hardship based on the documented social, religious, economic and political turmoil in Iran, the required military conscription and Iran's strong anti-American sentiment.

The second step required to obtain a waiver is to establish that the applicant's child would suffer exceptional hardship if he remained in the United States during the two-year period that the applicant resides in Iran. The applicant asserts that her child will suffer exceptional financial, emotional and psychological hardship due to his mother's absence for a two-year period. As stated by the applicant<sup>1</sup>:

...If my son were to remain in the United States or Canada while I returned to Iran, he would face extreme financial hardship. I furnish complete financial support for my son. Even if I am able to find work in Iran, it will be barely enough to support myself in Iran. I will not earn enough money to send any home to my son in order to support him or his education....

My salary in Iran would not be able to cover my son's expenses as a college student. If he were to take out loans while I was absent in Iran, he would have over \$60,000 in debt....

...I will be at very high risk, especially living without a male, of harassment and physical or sexual assault. My son is well aware of this issue, and he is already worried for me....The level of anxiety it will because him will undoubtedly create an emotional hardship on him....

*Supra* at 6-7.

With respect to the applicant's financial hardship contention, it has not been documented that the applicant's child's other family members, including his father, would be unable to assist financially with respect to the applicant's child. Moreover, it has not been established that the applicant's child would be unable to obtain scholarships, grants, and/or loans to assist with his schooling. Finally, although the AAO recognizes that attending school and working full-time to assume some, if not all, of the education costs, may be difficult, it is an arrangement that is commonly done by college-age students, and it has not been established that such an arrangement would cause the applicant's child exceptional hardship. Going on record without supporting

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<sup>1</sup> The AAO notes that no statement was provided by the applicant's child, twenty years old at the time the appeal was filed, outlining the hardships he would face were the applicant to return to Iran for a two-year period.

documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As for the emotional and psychological harm referenced by the applicant with respect to her child, the AAO notes that no mental health evaluation has been provided that ascertains what hardships the applicant's child, nearing adulthood, would face without his mother's presence. Assertions by the applicant without supporting, objective evidence do not suffice.

Finally, with respect to the aforementioned fears and anxieties that her son would experience based on the fact that the applicant is returning to Iran as a married woman who has left her husband, it has not been established that the applicant's ex-husband remains unwilling to divorce the applicant under Sharia law. In addition, no documentation has been provided that confirms that the applicant herself is unable to divorce her husband based on one or more of the conditions outlined in her marriage certificate, especially in light of the fact that according to the record, he has remarried.

The record, reviewed in its entirety, does not support a finding that the applicant's child will face exceptional hardship if the applicant's waiver request is denied. Although the AAO finds that the applicant has established that her child would experience exceptional hardship were he to relocate to Iran for a two-year period, it has not been established that the applicant's child would suffer exceptional hardship if he 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 her burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The waiver application is denied.