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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

APR 22 2008

IN RE:

[Redacted]

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:

[Redacted]

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 Turkmenistan who was admitted to the United States in J1 nonimmigrant exchange status on August 13, 2003 to participate in a program funded by the U.S. Department of State. 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 U.S. citizen spouse would suffer exceptional hardship if he moved to Turkmenistan 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 Turkmenistan.

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

In support of the appeal, the applicant provides a Form I-290B, Notice of Appeal, and a previously submitted Statement of Reason from the applicant, dated September 1, 2006. 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 would experience exceptional hardship if he resided in Turkmenistan for two years with the applicant. To support this contention, the applicant's spouse states the following:

...First, I don't speak any Russian or Turkmen and trying to live in a country where you don't speak the language is a very difficult task. Moreover, Turkmenistan is not the most welcoming country to outsiders especially foreigners who have married their citizens....

Second, I am a devout Protestant; my father was a Methodist Minister for over 17 years and is currently a minister for a Baptist Church. I don't think I need to express the difficulty it would be for me to profess my faith in a totalitarian government where the overwhelming religion is Islam. I could possibly face persecution and hardship if I were to profess my Christian faith while living in Turkmenistan and being a real Christian requires the profession of faith.

Third, I am extremely active in Politics. I am the speaker of the Senate for the Western Michigan University Student Government, I assist the treasurer of the Kalamazoo county Republicans every week keeping up to date his general ledger, I actively campaign in every level of elections, and I am on the ballot unopposed as a Kalamazoo County Delegate....I have been passionate and outspoken about my political believes [sic] all my life attempting to live in a country such as Turkmenistan could carry with it serious consequences.

Fourth, in the past two years my brother, my cousin, my uncle, and myself have been deployed in support of Operation of Iraqi Freedom. My family is probably one of the most patriotic and self-sacrificing peoples I have ever known....My parents and my grandparents had a hard time dealing with my brother and I being gone for over a year. If I were to leave again for another couple years especially to a country where I could face persecution for my religious and political believes [sic] I don't know what would happen to their physical and mental health.

Fifth, I am actively serving in the military and my enlistment is coming to an end in the middle of April 2007. Unless I try to forsake my duties to this country I could not relocate to Turkmenistan and remain in the military; second, I desire to serve my country as long as we are facing a war on terror and would like to continue to serve in the military supporting the freedom and ideals that we as a nation hold. Forcing my wife to leave and me to attempt to leave with her would force me to choose between my country and my wife....

Sixth, I am currently excelling in my education.... My education has already landed me an opportunity to work full time at the Kellogg Corp.... My employment at Kellogg's is our only real source of income and without Kellogg's having any operation in Turkmenistan I would be forced to leave my job.... Aside from leaving

my current position, there are very few if any western firms in Turkmenistan that are hiring inexperienced positions in finance, jeopardizing my opportunity to find work and support my household in that country....

Seventh I was seriously injured while serving in Iraq badly damaging both my knees. I am currently enrolled in the VA so that I can receive treatment.... I know for certain that there are no VA facilities in Turkmenistan (or any functioning health care infrastructure) that could attend to my legs should I experience a period of physical problems....

Letter from [REDACTED] dated August 2, 2006.

The U.S. Department of State corroborates many of the applicant's statements. As stated in the U.S. Department of State's Country Specific Information-Turkmenistan, in pertinent part:

Those considering travel to Turkmenistan should take the country's proximity to regions of past and current instability into account before making any plans. The Government of Turkmenistan has designated many areas throughout the country as "restricted zones," particularly the border areas next to Iran, Uzbekistan, and Afghanistan, the entire region of Dashoguz (including Dashoguz city), and areas of the Caspian coast. Travel to these areas by foreigners is forbidden without special permission from the Government of Turkmenistan. Turkmenistan Airlines, the national airline, will not sell a ticket to any traveler who intends to travel to a "restricted zone" without proof of permission from the government. Travelers who wish to visit a "restricted zone" must have a valid passport and visa and must apply to the Ministry of Foreign Affairs for a special permit. There is a minimum processing time of 10 working days for these permits.

Visible police and military presence in Turkmenistan is common. Both uniformed and plainclothes officials frequently ask to see passports, visas, migration cards, and SSRF registrations. Travelers should ask to see identification if they are not certain that the person requesting the information is an official. These documentation checks, and residence and vehicle searches, are common. Security personnel maintain checkpoints on major roads.

Security personnel may at times place foreign visitors under surveillance. Hotel rooms, telephones, and fax machines may be monitored, and personal possessions in hotel rooms may be searched. Taking photographs of anything that could be perceived as being of military or security interest, such as government buildings, may result in problems with authorities. Visitors should ask whether buildings may be photographed.

Supporters of extremist groups such as the Islamic Movement of Uzbekistan, Al-Qaeda, and the Eastern Turkistan Islamic Movement remain active in Central Asia. These groups have expressed anti-U.S. sentiments and may attempt to target U.S. Government or private interests in the region, including in Turkmenistan. Terrorists do not distinguish between official and civilian targets. Because of increased security at official U.S. facilities, terrorists are seeking softer civilian targets such as residential areas, clubs, restaurants, places of worship, hotels, schools, outdoor recreation events, resorts, beaches, maritime facilities, and commercial aircraft.

Although the government's official policy is to report that there is no violent crime, there are incidents of assault, rape, and murder sometimes directed at foreigners. Prostitution, heroin use, and worsening economic conditions are all factors contributing to the incidence of violent crimes. Petty theft is common in crowded public places such as the local bazaars. Visitors should take appropriate measures to safeguard their passports and valuables in such areas.

Foreign visitors, including American citizens, present an attractive target for criminals. Travelers should exercise the same common sense, good judgment, and caution as they would in any major U.S. city. For instance, one should avoid carrying large sums of money in public. Travelers should avoid walking alone after dark, and women specifically should avoid being alone in isolated areas. Taxis are not regulated by any government licensing agency and drivers are usually private citizens looking to make money. The majority of these cars will not have seat belts or other safety devices, and the driver may not have had any formal driver training. For safety reasons, visitors should consider hiring a private car and driver through their travel agency or hotel. If using local taxis, passengers should always negotiate fares with taxi drivers in advance, and extreme caution should be used when using taxis after dark, especially when there are other passengers in the vehicle.

Police can ask anyone to present identity papers at any time, but authorities are especially aggressive late at night. Even if valid papers are presented, the police may ask for a bribe. For this reason, those going from place to place late at night should consider using a trusted driver.

Medical care in Turkmenistan is limited and well below North American and Western European standards. All visitors are strongly advised to purchase medical evacuation insurance to cover costs associated with transporting them to adequate medical facilities in the event of serious illness or injury. Such travel can be expensive if undertaken under emergency conditions, and absent this insurance, medical evacuation travel may be logistically impossible on an emergency basis. Travelers with medical conditions should consult their regular

physician to determine whether travel to Turkmenistan is advisable in light of the level of available health care. Resident American citizens travel to Western Europe or North America for treatment of any serious medical condition. The U.S. Embassy maintains a list of public hospitals and English-speaking physicians in the country, however the standard of care at these hospitals cannot be considered comparable to Western standards. Basic medical supplies, including disposable needles, anesthetics, and antibiotics are often in short supply. Two private clinics have foreign medical practitioners (generally Turkish) who may be available for consultations and treatment; these clinics, however, have refused in some cases to admit patients with serious conditions, regardless of the patient's ability to pay for treatment. Even at these hospitals, the standard of care is low compared to Western standards. Travelers requiring prescription medications should bring sufficient supplies of all necessary medications and appropriate documentation to ensure no problems with customs officials upon arrival.

Country Specific Information-Turkmenistan, U.S. Department of State, dated September 20, 2007.

Based on the substandard medical care in Turkmenistan, the problems the applicant's spouse would encounter in terms of finding gainful employment, the language barrier, professional and academic disruption, the applicant's spouse's continuing obligations with the U.S. military and the safety concerns for U.S. citizens with respect to Turkmenistan's proximity to regions of past and current instability, including Iran, Uzbekistan, and Afghanistan, the AAO concurs with the director that the applicant's spouse would encounter hardship that would go significantly beyond that normally suffered upon the temporary relocation based on a spouse's two-year home foreign residency requirement.

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

...It's very hard to convince any government agency or any individual the hardship I would go through if [redacted] [the applicant] were to leave me.... [redacted] has become such an important part of my life that I can't even really imagine living without her....

...My life with [redacted] is everything to me and I have done everything possible to survive our time apart. I beg that you would see the sacrifices we both have made to this country and the hardships we have already been through.... I could not survive another period of separation. Imagine being separate from your own spouse for three out of four years. Imagine the extreme hardship and stress that would cause you and your spouse, the person whom you share problems with, finances with, joys, dreams, day to day activities, and everything else, if you were to be separated for such a long period of time.

Supra at 3-5.

The applicant has not provided any documentation from a mental health professional that describes the ramifications that the applicant's spouse would experience were he to be separated from the applicant for two years. The AAO notes that the applicant's spouse was previously separated from the applicant during his deployment in Iraq and it has not been established that he experienced exceptional hardship due to the separation. Moreover, no documentation has been provided that establishes that the applicant and her spouse would be unable to see each other, whether in Turkmenistan or another country, on a regular basis, as they have done during past separations. In addition, although references are made to the financial hardship that the applicant will face upon her return to Turkmenistan, it has not been established that her spouse, who is employed full-time, would be unable to assist her, thereby ensuring that he does not face hardship due to his wife's financial situation in Turkmenistan. Finally, no documentation from a medical professional has been provided that outlines the applicant's spouse's current medical condition, its short and long-term treatment plans, and what hardships he would face without his spouse's assistance. The most recent medical documentation in the record with respect to the applicant's spouse states that the applicant's spouse is "fit." *Statement of Medical Examination and Duty Status*, dated June 2006.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face exceptional hardship if the applicant's waiver request is denied. Although the AAO finds that the applicant would suffer exceptional hardship if he moved to Turkmenistan with the applicant for the requisite two-year period, the applicant has failed to establish that her spouse would suffer exceptional hardship were she to relocate to Turkmenistan while he remained in the United States.

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 will be denied.