

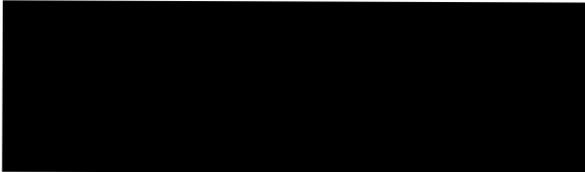
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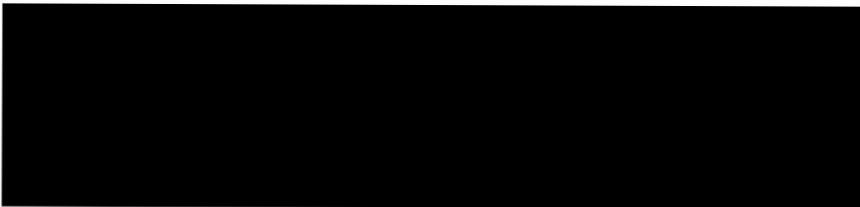


FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **AUG 22 2008**

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:



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, Nebraska 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 applicant, a native and citizen of Pakistan, was admitted to the United States as a J-1 exchange visitor in January 1994. He 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) based on government financing. The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen child, born in January 1997, would suffer exceptional hardship if he moved to Pakistan temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Pakistan.

The director determined that the applicant failed to establish that his U.S. citizen child would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Pakistan. *Director's Decision*, dated September 14, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides the following: a psychological evaluation; an expert analysis with respect to conditions in Pakistan; and additional documentation in regards to Pakistan. 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 U.S. citizen child would experience exceptional hardship if he resided in Pakistan for two years with the applicant. To support this contention, the applicant summarizes the hardships his child would face in Pakistan:

...The degree of anti-American sentiment that exists today and continues to grow in Pakistan is terrifying and the seriousness of the situation cannot be downplayed. The attacks of September 11, 2001 began a chain of events that has led to an unprecedented rise in anti-American sentiment in Pakistan. Although prior to this time anti-Americanism was alive and well in Pakistan, it was present in a much smaller segment of society.

Today, extreme anti-Americanism has been mainstreamed into Pakistani society. Hatred of the United States is found at all levels of Pakistani society and has become decisively a majority view....

As this is the reality that Anti-American sentiments prevail in all level of the people of the Pakistan, it is also the reality that my American-born son [REDACTED] [REDACTED] with out any question, in action, in behavior, in accent, in talk and also in thinking is Americanized. He is growing in an open society, whatever he feels, he can say. Let me quote one very specific example regarding my son [REDACTED]. Sometimes with me, with my wife and also with his older brother and sister he talks like that ‘I like soldiers. I want to become soldier. I want to join the USA army. Soldiers are good people and they save people. USA soldiers are doing good job in Iraq. They are capturing and killing bad people.’ Now let me come on the other side. Suppose if we are forced to live in Pakistan and if my son talks the above mentioned...in an Anti-American environment, people will not like that and he will become socially isolated and perhaps physically injured. Moreover there are the chances some Islamic Extremists can kidnap him or kill him....

My US born son is presently nine years old. He currently attends the Lee Public Elementary School in Columbia, Missouri. My son is without question a fully Americanized child. He is fully immersed in the American way of life and culture. He is doing very well academically in school. He loves going to school, get along very well with his classmates and already knows the name of the middle school he is to attend following elementary school. My wife and I as parents have done and will do our utmost to ensure our child take advantage of all the opportunity America has to offer him. He not only views and thinks of himself as an American, he could not be anything else even if he wanted to. Having grown up in this country, he has much more in common with other American children than with children in Pakistan. In fact, there is a great cultural gulf between my son and

Pakistani children that we know. The world he has known here in the United States, the only world to which he is accustomed, is miles apart from the experience of growing up and living in Pakistan.

There is no question that my child will be perceived and stand out as American should he lives in Pakistan. Should my child resides in Pakistan, he would not only be exposed to serious physical danger, he would also be exposed to a devastating attack on his identity, self image, and emotional and psychological wellbeing. The fact that he is born of Pakistani parents and share their ethnicity and appearance will not shield him from being viewed and perceived as American by Pakistani society.

Should my child have to reside in Pakistan, he would be inundated and surrounded by pervasive Anti-Americanism everywhere. In school, my child will stand out and be easily identifiable as American due to his accent and inability to speak Urdu. Pakistani children have absorbed the extreme anti-Americanism that surrounds them and naturally reflect the same attitudes towards the United States that are held by society at large. Undoubtedly this will affect and guide their attitude towards and treatment of my child. My son apart from having to deal with the great hardship of trying to adapt to a new school in a vastly different foreign country whose language he does not speak or understand, would be attacked, teased and ostracized by his classmates for being American.... Such an experience would not only be an exceptional hardship for my U.S. citizen child, it would lead to serious and psychological trauma and confusion....

In addition to the extreme pressure my child would face at school due to his American identity, I also have great fear that he could come to harm at the hands of Muslim extremists and terrorists who seek to target anything American. The fact that my child has family roots in Pakistan will not deter extremists from viewing him as American.... Additionally, the fact that I have committed myself to a life in the United States and raising my children here would also place me at risk, and should anything happen to me in Pakistan, my US child...would undoubtedly suffer exceptional hardship as a result.

Member's of terrorist groups such as al Qaeda and the Taliban from Afghanistan, have infiltrated and spread throughout Pakistan. This has especially occurred since the U.S. invasion of Afghanistan.... The presence of these entities in Pakistan, does not bode well for my U.S. citizen child, and I have great concern that he should be thrust into such an environment.

Pakistan faces an extreme problem in terms of the prevalence of violent crime. The law and order situation is in shambles and the police cannot be depended upon for protection....

I especially worry about the danger of kidnapping for ransom in Pakistan. People in Pakistan very well understand that USA is a rich country. Based upon this understanding, they perceive the people who live in USA and return back to Pakistan, as being rich. If I am forced to go back to Pakistan, I will be perceived as wealthy even though I am not. Because of this perception, my children would be at great risk of being targeted by kidnapers. Criminals will believe that if they capture my child...they could extort a great deal of money from me....

Pakistan is not only a country in political turmoil; it is also a country facing an epidemic of deteriorating environment and health conditions. Water and air pollution is rampant.... The safety of the drinking water cannot be trusted pretty much anywhere.... Water pollution is a primary source of the transmission of diseases such as hepatitis, tuberculosis and typhoid.... Water pollution also finds its way into the food chain, causing food poisoning. Malaria is also a serious problem, and children are always the most vulnerable to dying from malaria....

My...children...having been raised in the United States would be particularly vulnerable to the dangerous health conditions in Pakistan because they have not developed many of the immunities to local organisms the Pakistan children have. Children are the most vulnerable to pollution and disease. This, combined with my children's immune systems not being accustomed to organisms found in the food and water in Pakistan, creates an especially hazardous situation for them....

The culture and standard of living in Pakistan is shockingly different from that in the United States. To begin with, my child does not speak Urdu, the common language of Pakistan.... The inability to speak the native language would prove to be a huge obstacle.... My son, [REDACTED], would thus be socially isolated from his peers due to the language barrier.... The effect on [REDACTED]'s [the applicant's child's] education would be devastating. Apart from the language problem, Pakistani public education does not rise to the level of education he is receiving in the United States. This situation could not be fixed by sending [REDACTED] to a private English speaking school because it is simply unaffordable....

Furthermore, [REDACTED] is accustomed to the American standard of living. Pakistan is an increasingly poor and chaotic country with an exploding population. My child could not enjoy nearly the same standard of living as he does in the United States. If our family is forced to go to Pakistan, the economic outlook for us would be bleak. If I found a job, the pay is low and the cost of living, particularly rent, is very high....

To corroborate the above, counsel has provided documentation regarding the problematic political and social situation in Pakistan, in the form of articles and an expert analysis from Middle East, Arab, and Muslim World Studies, Graduate School of International Studies, University of Denver, dated October 17, 2007. In addition, the AAO notes that a Travel Warning, issued by the U.S. Department of State, Bureau of Consular Affairs, dated August 7, 2008, states, in pertinent part, the following:

This Travel Warning updates information on security incidents and reminds U.S. citizens of ongoing security concerns in Pakistan. This Travel Warning supersedes the Travel Warning dated September 21, 2007.

The Department of State continues to warn U.S. citizens against non-essential travel to Pakistan in light of the threat of terrorist activity.

The presence of Al-Qaida, Taliban elements and indigenous sectarian groups poses a potential danger to American citizens, especially in the western border regions. Continuing tensions in the Middle East also increase the possibility of violence against Westerners in Pakistan. Terrorists and their sympathizers have demonstrated their willingness and capability to attack targets where Americans are known to congregate or visit, such as hotels, clubs and restaurants, places of worship, schools, or outdoor recreation events. In March 2008, a restaurant frequented by westerners in Islamabad was bombed, killing one patron and seriously injuring several others, including four American diplomats. On March 2, 2006, an American diplomat, his locally employed driver, and three others were killed when a suicide bomber detonated a car packed with explosives in front of the U.S. Consulate General in Karachi. Fifty-two others were wounded.

Sectarian and extremist violence has resulted in fatal bomb attacks in Islamabad, Rawalpindi, Karachi, Peshawar, Quetta, Lahore, and other Pakistani cities in 2006, 2007 and 2008. Since 2007, over 1,000 bombings have killed more than 1,000 people throughout Pakistan and injured many more. Some of the attacks have occurred outside major hotels, in market areas and other locations frequented by Americans. Other recent targets have included restaurants, Pakistani government officials and buildings, and international NGOs.

Rallies, demonstrations, and processions occur regularly throughout Pakistan on very short notice. In the aftermath of the December 2007 death of former Prime Minister Benazir Bhutto, widespread rioting in Karachi led to multiple deaths and injuries as well as widespread property damage. Demonstrations have often taken on an anti-American or anti-western character, and Americans are urged to avoid large gatherings.

In 2007 and 2008, several American citizens throughout Pakistan were kidnapped for ransom or for personal reasons. Kidnappings for ransom are common in some parts of Pakistan, such as the Northwest Frontier Province and Sindh Province.

Travel Warning, U.S. Department of State, Bureau of Consular Affairs, dated August 7, 2008.

Based on the documented social, political and economic turmoil in Pakistan, anti-American sentiment and the emotional and psychological ramifications of such sentiments on a young, U.S. born child and the U.S. Department of State's position on travel to Pakistan by U.S. citizens, the AAO finds that the applicant's U.S. citizen child would experience exceptional hardship were he to accompany the applicant to Pakistan for a two-year term. Moreover, the record establishes that the applicant's U.S. citizen child is integrated into the U.S. lifestyle and educational system. He has never lived outside the United States and he does not speak, read or write in the native language of Pakistan. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who 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 Pakistan would be a significant disruption that would constitute exceptional hardship. As such, based on a totality of the circumstances, the AAO finds that the applicant's U.S. citizen child would encounter exceptional hardship were he to relocate to the Pakistan.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen child would suffer exceptional hardship if he remained in the United States during the two-year period that the applicant resides in Pakistan. The applicant asserts that it would be impossible for the applicant's child to remain in the United States for two years while the applicant returned to Pakistan with his wife and two Pakistani-born children because no one would be available to care for his U.S. citizen child. As stated by the applicant,

...I entered as J1 student in USA on January 9, 1994 to complete my Ph.d in Rural Sociology....

...My wife and my Pakistani born children also entered the US on J2 visas. They entered on January 9, 1994, the same date that I entered....

If my application for a waiver is denied, leaving my U.S. born child alone in the United States is not an option. First, neither my wife nor I have relatives or trustworthy friends who could take care of him. Second, I cannot make some arrangements for his living and education with some private individual/organization, simply I do not have the money. Third, I don't want to burden the government to keep and provide for my son if he was left behind. My wife and I firmly believe it is our foremost responsibility to care for our child. Therefore, we have to take him to Pakistan with us. Fourth, [REDACTED] the applicant's child] is the youngest child in my family and he is emotionally and psychologically

very much attached to us. At night he cannot go to sleep unless his mother lays down with him. My wife and I have decided that no matter what happens, our family unit will stay together....

Supra at 1, 7

As the record indicates, the applicant, his wife and two of their children are J visa holders subject to the two-year foreign residency requirement. Such a requirement would leave a young child in the United States without his parents and siblings. This situation would constitute exceptional hardship to the applicant's child if he remained in the United States.

The AAO finds that the applicant has established that his U.S. citizen child would experience exceptional hardship were he to relocate to Pakistan and in the alternative, were he to remain in the United States without the applicant, for the requisite two-year term. As such, upon review of the totality of circumstances in the present case, the AAO finds the evidence in the record establishes the hardship the applicant's U.S. citizen child would suffer if the applicant temporarily departed the U.S. for two years would go significantly beyond that normally suffered upon the temporary separation of families.

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 he 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.