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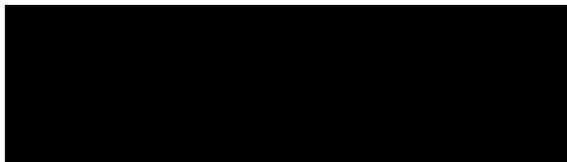
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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#3

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FILE:

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Date: FEB 25 2008

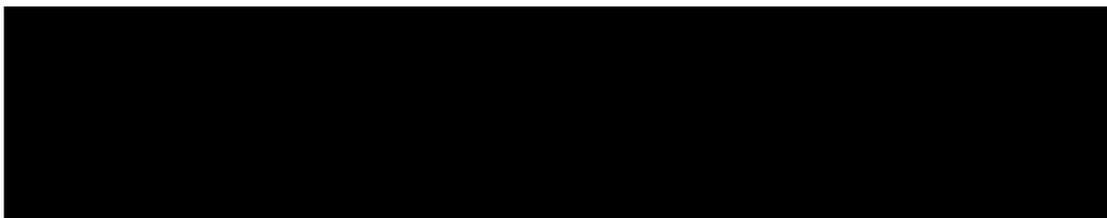
IN RE:



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 cursive script, 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 of England and a citizen of Israel who was last admitted to the United States in J-1 nonimmigrant exchange status on December 21, 1997, to participate in a program funded by the government. 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 residence requirement, based on the claim that her U.S. citizen spouse, and child born on December 18, 2002, would suffer exceptional hardship if they moved to Israel temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled her two-year foreign residence requirement in Israel.

The director determined that the applicant failed to establish that her spouse and child would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Israel. *Director's Decision*, dated September 19, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides the following documentation: a brief, dated October 18, 2007; a letter from the applicant's spouse's psychologist, dated October 9, 2007; a letter from the applicant's spouse, dated October 15, 2007; evidence that the applicant is pregnant, with an expected delivery date of February 2, 2008; a letter from [REDACTED] Professor and Head, Department of Philosophy, Carnegie Mellon University, regarding the applicant's spouse's employment prospects with said organization; and financial documentation relating to the applicant and her family. 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 Israel for two years with the applicant. To support this contention, the applicant states the following:

...If I go back to Israel, then without a doubt [redacted] and our daughter [redacted] would come with me. The alternative is really unimaginable for us. [redacted] is only four years old, still so vulnerable and so much in need of all the love and support and protection of both of her parents. Neither of us can imagine being separated from her, or putting her through the heartache of being separated from one of us....

[Residing in Israel] would have the same negative consequences on his professional life and thus ultimately on his mental health. Just as there is no paid academic work available for me in Israel, so there would be none for [redacted]. We could not afford to get by on one salary. So, just as I would have to work at a non-professional job, so would he. (Bear in mind that [redacted] does not speak Hebrew, so his chances of satisfying employment are even lower than mine.) In this scenario, too, [redacted] would be forced to give up his current position and the professional gains he has made in the last several years.

[redacted] is now 49 years old. He doesn't have two years to throw away. It is a fact of academic life that even for young people, it is almost impossible to leave the field and then come back...by the time we return, he would be in his fifties, and would have to start again....

Today, [redacted] is in the best mental health he has been in for years, thanks to his continuing success and to [redacted]. If we go to Israel, his depression will undoubtedly return.... He will suffer stress, not only from the reduced circumstances of his life, but also from anxiety about the physical safety of [redacted] and of myself.... I lived in Israel for many years, and learned to accept the possibility of terrorist attacks as a fact of life. For [redacted] who suffers from anxiety, this resignation will be hard to achieve. In fact, it is very likely that the stress he will experience will worsen his existing anxiety disorder.

This anxiety disorder is something that it has taken me, literally, years to fully appreciate. Anxiety, really, is too mild a term for what he experiences. When it grips him, what he feels is an irresistible, terribly real fear of doing harm to himself. It is not a desire to harm himself; it is a fear that he will somehow lose control of himself and do something he does not at all want to do.... An example: one recent semester, we attended a monthly linguistics seminar which was held in a room on the second floor of a building with a large open stairwell. [redacted] was unable to use that

stairwell. Fortunately, there is an elevator in the building; had there not been, he would have been unable to attend the meetings.

In Israel, [REDACTED]'s phobia might lead to even more day to day problems. Almost everyone there lives in multi-storey apartment buildings, which, because of the climate, are typically equipped with large, open balconies. That sort of situation is simply a nightmare for [REDACTED]

There is one further factor which must be taken into consideration.... Tom suffers from lupus. Lupus is an auto-immune disorder in which the immune system produces antibodies directed against the body's own healthy cells and tissues. Tom has a form of lupus (subacute cutaneous lupus) which affects the skin, and manifests itself as lesions, primarily on the face. Once a new lesion appears, it does not go away.

There is no cure for lupus....there is one very important precaution which is crucial for lupus patients: to avoid exposure to sun. Exposure to sun immediately worsens lesions (increases redness and inflammation) and makes new lesions appear. Even more seriously, it is believed that exposure to sunlight may in some cases cause cutaneous lupus to develop into the much more serious systemic form of the disease, in which the over-active immune system attacks the joints and internal organs, as well as the skin.... Obviously, it is going to be much harder for Tom to avoid sun exposure during a two-year stay in Israel than it is in Pittsburgh....

*Letter from [REDACTED] dated March 27, 2007.*

The applicant's spouse further details the hardships he and his child would encounter were they to relocate to Israel. As stated by the applicant's spouse,

...The physical risks of life in Israel are in many ways well-known and obvious. We visited Israel in the summer of 2005 for about ten days...but this was at a time when there was a lull in violence.... We saw no violence when we were there, except on TV, and felt quite safe.... The summer after our visit, however—in the very same month—[REDACTED] and [REDACTED] were all hit by a new style of rocket launched by Hezbollah guerillas in Lebanon. There was considerable and tragic loss of life and property.... In addition, suicide bombers are an undeniable fact of life in Israel in all locations, so that simple activities like taking a bus or walking in the street are fraught with an ever present sense of foreboding.... It is a terrible thought for me that my daughter should be exposed to these risks....

...I have been diagnosed with an anxiety disorder associated with high places and situations of perceived danger. This condition started in study week during my sophomore year as an undergraduate....more than ten years have passed by

and the condition persists. I keep it in check with behavioral medication techniques and regular counseling.... The common element in all anxiety-provoking situations for me is the perception of risk to myself or to people in my immediate domain.... I believe that having her [the applicant's daughter] live in Israel...would exacerbate my anxiety even beyond what it would be if I were there alone....

Medically, I have been diagnosed with cutaneous lupus.... What my doctors have told me in no uncertain terms is that I must avoid exposure to sun.... This provides me with an additional reason to avoid living in Israel, where the sunlight is direct and year-round....

Not only would there be a serious financial strain on me and my family if we had to go to Israel, but it would impact my career in a very negative fashion.... We have investigated the possibilities for linguistics jobs in Israel and have found out there are no jobs available.... If I had to go to Israel, I would certainly have to work, but I would not be able to do linguistics research. Moreover, I do not speak Hebrew...after two years out of the field, my chances of resuming the research and the schedule of publications would be depressingly small....

Letter from [REDACTED] dated March 28, 2007.

[REDACTED] Professor of Linguistics, Rutgers, states the following:

...I am a Professor of Linguistics in Rutgers University. I am familiar with Dr. Werner's professional situation.

[REDACTED] completed his PhD 3 years ago and has since been building a career in a field with a very tight job market.... If this momentum is maintained, Dr. [REDACTED] will thrive professionally. It is my sense, however, that were he to remove himself from the profession for a period of two years, he would severely damage his career chances. Such an extended period of absence would make it difficult, if not impossible, to resume work in linguistics and would certainly create an embarrassing lacuna in his curriculum vita.

Letter from [REDACTED] Professor of Linguistics, Rutgers, The State University of New Jersey, Department of Linguistics, dated November 30, 2006.

The U.S. Department of State states, in pertinent part, the following regarding country conditions in Israel:

U.S. citizens, including tourists, students, residents, and U.S. mission personnel, have been injured or killed by terrorists while in Israel, Jerusalem, the West Bank and Gaza. Attacks have occurred in highly frequented shopping and pedestrian areas and on public buses. U.S. Embassy and Consulate General American

employees and their families are prohibited from using public buses and trains. American citizens should use good judgment and exercise caution when visiting public areas and using transportation facilities to minimize exposure to possible terrorist attacks. Strategies to minimize risk include: avoiding demonstrations and large crowds, being aware of one's immediate surroundings, especially while visiting contentious religious sites, military areas, and establishments frequented by off-duty soldiers, and by avoiding suspicious objects.

In the West Bank, Gaza and Jerusalem, demonstrations or altercations can occur spontaneously and have the potential to become violent without warning. If such disturbances occur, American visitors should leave the area immediately. In Jerusalem's Old City, where exits are limited, American visitors should seek safe haven inside a shop or restaurant until the incident is over. Demonstrations are particularly dangerous in areas such as checkpoints, settlements, military areas, and major thoroughfares where protesters are likely to encounter Israeli security forces.

U.S. Government personnel in Israel and Jerusalem, whether stationed there or on temporary duty, are under tight security controls, as noted below. In addition, they occasionally may be prohibited from traveling to sections of Jerusalem and parts of Israel depending on prevailing security conditions.

In Jerusalem, travelers should exercise caution at religious sites on holy days, Fridays, Saturdays, and Sundays, and dress appropriately when visiting the Old City and ultra-orthodox Jewish neighborhoods. Most roads into ultra-orthodox Jewish neighborhoods are blocked off on Friday nights and Saturdays. Assaults on secular visitors, either for being in cars or for being "immodestly dressed," have occurred in these neighborhoods. Isolated street protests and demonstrations can occur in the commercial districts of East Jerusalem (Salah Ed-Din Street and Damascus Gate areas) during periods of unrest. U.S. Government American employees are authorized to travel to the Old City and the Mount of Olives during daylight hours only. Although few security incidents have occurred recently within the Old City, visitors are urged to exercise caution and be aware of their surroundings at all times. This is especially true when entering or exiting the Old City at times when the volume of pedestrian traffic could create difficulties.

*Country-Specific Information-Israel, U.S. Department of State, Bureau of Consular Affairs, dated May 9, 2007.*

Moreover, in a Travel Warning issued by the U.S. Department of State in July 2007, the following was stated regarding Israel:

Israeli authorities are concerned about the continuing threat of suicide bombings. The January 2007 bombing in Eilat, the April 2006 and January

2006 suicide bombings in Tel Aviv, the December 2005 suicide bombing in Netanya and a similar incident in Hadera in October 2005 are reminders of the precarious security environment. The threat of such attacks is ongoing. The U.S. Government has received information indicating that American interests could be the focus of terrorist attacks. For that reason, American citizens are cautioned that a greater danger may exist in the vicinity of restaurants, businesses, and other places associated with U.S. interests and/or located near U.S. official buildings, such as the U.S. Embassy in Tel Aviv and the U.S. Consulate General in Jerusalem.

American citizens are urged to exercise a high degree of caution and common sense when patronizing restaurants, cafes, malls, places of worship, and theaters, especially during peak hours. Large crowds and public gatherings should be avoided to the extent possible, and personnel should be alert to street vendors who sometimes aggressively harass tourists. American citizens should take into consideration that discos and nightclubs, as well as public buses, trains and their respective terminals are "off-limits" to U.S. Government personnel.

Violence between organized criminal elements sometimes occurs in areas frequented by foreigners and has occasionally resulted in death or injuries to bystanders. While American citizens have not been the target of such violence, they should be aware of their surroundings and follow common sense precautions to avoid it.

The State Department urges American citizens to remain vigilant while traveling throughout Jerusalem, especially within the commercial and downtown areas of West Jerusalem and the city center. Israeli security services report that they continue to receive information of planned terrorist attacks in and around Jerusalem. The last terrorist bombing in Jerusalem was on September 22, 2004. Spontaneous or planned protests within the Old City are possible, especially after Friday prayers. Some of these protests have led to violent clashes. The Old City of Jerusalem is off-limits to U.S. Government personnel and their family members after dark during the entire week and between the hours of 11 am and 2 pm on Fridays.

*Travel Warning-Israel, U.S. Department of State, Bureau of Consular Affairs, posted July 13, 2007.*

Based on the career disruption that the applicant's spouse would encounter were he to reside in Israel for a two-year period with the applicant, the concerns outlined above regarding the language barrier that the applicant's spouse would face, the documented mental and physical health conditions suffered by the applicant's spouse, and the safety and security concerns for U.S. citizens residing in Israel, 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 Israel for a two-year period.

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 Israel. As stated by the applicant's spouse,

...With respect to the depression, the evidence is that this stems from difficulties in my career. Therefore, there is every reason to believe that a set-back in my career would worsen the depression.... My wife's departure from the country for a period of two years would inevitably lead to a set-back in my career. Right now, I have what amounts to a modest supplemental income from teaching linguistics courses at Carnegie Mellon University. The arrangement gives me the time and the institutional resources to do my linguistics research. There is no guarantee from my employer, however, that the work will continue if my wife has to leave and is not present to manage the newly formed Linguistics Major. Even more to the point, I will not be able to support myself or my children, let alone a second household in Israel, on my current income. I would be forced to abandon the pursuit of my career to find work elsewhere and this will prove to be a decisive blow to my career. As I contemplate the setback that this denial entails, I feel my capacity to cope and hold these conditions in check will be tested to the extreme.

My wife's presence and support are crucial elements in maintaining my psychological gains, and I rely on her especially during inevitable bouts of depression....

I have no comment to make on the claim that [REDACTED], who is four years old, would not experience exceptional hardship if the waiver is denied. I do not know what documentation would show that she would not suffer unreasonably to be away from her mother, who she loves dearly, for two years. I do not know what documentation would show that [REDACTED] would not be adversely affected, beyond normal standards, if her father is unsuccessful in his career and experiences scarring psychological disorders....

Letter from [REDACTED] dated October 17, 2007.

[REDACTED], Ph.D., ABPP, corroborates the concerns outlined by the applicant's spouse with respect to the emotional and psychological hardship that the applicant's spouse would experience were the applicant to reside abroad for a two-year period. As [REDACTED] states,

...I have been treating him [the applicant's spouse] since November 19 2005 for depression...and for panic disorder with agoraphobia. The depression was related to his difficulties in getting his career launched....

It is my understanding that if [REDACTED] stayed in the United States without his wife, he would be obliged to look for work outside his chosen field of linguistics, in

that his present role as an adjunct instructor at Carnegie Mellon University, while adequate to supplement his wife's income, does not pay sufficiently well to enable him to support himself, let alone to support his children.... Despite significant progress in his professional development, I fear that disrupting it again at this critical period, especially for two years of enduring financial hardship along with the stress of caring for two young children in the absence of his wife, would compromise his mental health....

I am concerned that this possible separation from his spouse, with all its complications, would result in significant harm to [REDACTED] at the level of his career, of his family life, and of his psychological health.

*Letter from [REDACTED] Ph.D., ABPP, Pittsburgh Assessment and Consultation Center, dated October 9, 2007.*

With respect to the applicant's spouse, the AAO notes that irrespective of the applicant's immigration situation, it has not been clearly established that the applicant's spouse would obtain a Teaching Faculty position with Carnegie Mellon University. In fact, the letter from [REDACTED] Professor and Head of the Department of Philosophy at Carnegie Mellon University, states that a position for the applicant's spouse is contingent on the "continued demand from students for additional courses" and although Professor [REDACTED] indicates that the applicant plays an integral role in the program's success, it has not been established that the program would not continue even if the applicant were to relocate abroad for two years. *Letter from [REDACTED], Professor and Head, Department of Philosophy, Carnegie Mellon University.*

Moreover, no documentation has been provided that establishes that the applicant's spouse would be unable to find a comparable research position in another institution should the faculty position in Carnegie Mellon not come to fruition. Nothing in the record establishes that being unable to work at Carnegie Mellon University specifically would cause the applicant's spouse exceptional psychological hardship and/or career disruption. Furthermore, it has not been established that an alternate position in the applicant's spouse's area of expertise with another institution would not provide gainful employment with health insurance that would avoid financial and medical hardship. Finally, it has not been established that the applicant herself would be unable to obtain gainful employment in Israel that would allow her to assist with the maintenance of the U.S. household. While counsel provides evidence that the applicant was unable to obtain an employment offer with a number of universities in Israel, counsel has failed to document that the applicant would be unable to obtain gainful employment in a non-university setting.

Regarding the applicant's daughter, it has not been documented that the applicant's child would suffer exceptional hardship were she to remain with her father while her mother resides abroad for a two-year term. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). It has also not been shown that it would be exceptional hardship for the applicant's spouse and child to visit the applicant. The AAO thus finds that the applicant's departure to Israel

for a two-year period while her spouse and child remain in the United States would not cause them hardship that would be significantly beyond that normally suffered upon the temporary separation of families.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse and/or child will face exceptional hardship if the applicant's waiver request is denied. While the AAO finds that the applicant has established that her spouse and child would suffer exceptional hardship were they to relocate to Israel, it has not been established that they would suffer exceptional hardship were they to remain in the United States while the applicant returns to Israel for a 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.