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**U.S. Citizenship  
and Immigration  
Services**

H3

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

JAN 25 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 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 record reflects that the applicant, a native of Syria and a citizen of Lebanon, was admitted to the United States as a J1 alien physician exchange visitor in June 1997. 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 naturalized U.S. citizen spouse would suffer exceptional hardship if he moved to Lebanon 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 Lebanon.

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 Lebanon. *Director's Decision*, dated May 23, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides the following documentation: a brief, dated July 19, 2007; information about country conditions in Lebanon; a letter and psychological evaluation with respect to the applicant's spouse's mental health, from [REDACTED], dated June 19, 2007; and a letter from [REDACTED] Medical Director, Huntington Reproductive Center, dated June 11, 2007, regarding the applicant's and her spouse's fertility issues. The entire record was reviewed and considered in rendering this decision.

Section 212(e) of the Act states in pertinent part that:

- (e) 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 Lebanon for two years with the applicant. To support this contention, the applicant’s spouse states the following:

...My name is \_\_\_\_\_ and I am a U.S. Citizen of Lebanese origin...I am of Christian religion. I left Lebanon in 1984 due to war and the Islamic persecution against Christians and after I was kidnapped in Beirut on February 4<sup>th</sup>, 1984.

At that time, I was an engineering student at the American University of Beirut (AUB), located in Muslim-controlled part of Beirut. Due to the fact that my home was in Tripoli, which is another big city...I lived in the Dormitory at AUB and would go home during ceasefire...To give you an idea of the political climate then, here is a description of a typical trip home. On a trip that should take about an hour drive, it takes a full day due to detours, because of war stop zones. Travelers would be required to cross from an Islamic-controlled area in Beirut to a Christian-controlled area. Then travelers would have to drive through a Christian area in Lebanon and than (sic) to Islamic-controlled area and this would continue back and forth. There were numerous stops at many different road blocks and checkpoints by different political and religious parties. Traveling itself was cause for anxiety. Travelers would have to explain at every checkpoint where they are coming from, where they are going and why they are going there. At different occasions as travelers were being stopped at checkpoints, war or gunfire would erupt, and travelers would have to hide behind mounds of dirt or hurry to drive away with the risk of being shot at or hit by gunfire...Our very lives were at risk.

On February 4<sup>th</sup>, 1984, after 3 days of intensive war and heavy shelling and spending 3 days in the basement of the dormitory building with no power, food and water, a ceasefire was negotiated to evacuate university students...So, students from different parts of Lebanon started assembling in groups to leave Beirut to go to their hometowns...When I was in my car at the front entrance to the American University and ready to drive off to pick up my sister and cousins, three armed men pulled their weapons on me and forced themselves into my car. I was terrified.

They pulled me to the back seat with guns pointed to my head and drove off. They shouted at me to give them my identity card. In Lebanon, the identity card (ID) cards states the individual's religion and sect. When I gave the kidnapers my ID card, they found out that I was a Christian. They started shouting at me for being Christian...I was scared for my life...They drove me to a deserted location in the city of Beirut and kept on driving around. Aside from the physical intimidation of

their guns pressed against me, there was fortunately no physical abuse. Later in the day, after feeling for sure my life was over, I was released in a deserted street somewhere in Beirut or a Southern Suburb of Beirut with bags of my clothes and books that were in the trunk.

...Since that day, I never felt safe in Lebanon. My family and I immediately decided that it would be safer and better to go and finish my studies in the United States. I left Lebanon on August 11, 1984 and continued my engineering school at the University of Arizona in United States of America. I have since built my life in the United States and became a U.S. citizen.

I remember this kidnapping as if occurred yesterday. Sometimes I don't sleep because I have recurring nightmares of the kidnapping. It is impossible to express in words the fear I felt in that experience and I will never forget it. Sadly, my mind won't let me forget it at times that I want to...I cannot imagine living in Lebanon again—it would be too much for me, especially because it seems the same political situation has begun again in Lebanon. The tension levels are so high that no one is safe...

*Affidavit of* [REDACTED] dated March 8, 2007.

Counsel has provided a psychological evaluation with respect to the applicant's spouse's mental health. As stated by [REDACTED], Licensed Psychologist, in her report dated June 19, 2007,

...It is my professional opinion as a psychologist that [REDACTED] [the applicant's spouse] is suffering from Posttraumatic Stress Disorder (PTSD) that dates back to when he was kidnapped and held hostage in Lebanon at the age of 19...his awareness of the marked increase in danger to residents of Lebanon due to recent increases in violent civil conflict have lead to an exacerbation of his PTSD...

[REDACTED] cannot return to Lebanon because of the history of violence and terror he experienced there...

*Psychological Evaluation from* [REDACTED] dated June 19, 2007.

Counsel has also provided a number of articles regarding the problematic political and religious situation in Lebanon. Moreover, counsel has provided a Travel Warning, issued by the U.S. Department of State, Bureau of Consular Affairs, dated June 14, 2007, stating the following:

This Travel Warning alerts American citizens to the ongoing fighting and political tensions in Lebanon and advises them of safety and security concerns. The Department of State continues strongly to urge that Americans defer travel to Lebanon, and that American citizens in Lebanon consider carefully the risks of

remaining... The Department remains concerned about the personal safety and security of American citizens as the fighting continues...

Landmines and unexploded ordnance pose significant dangers...More than a dozen civilians have been killed and over 100 injured by unexploded ordnance following the armed conflict in July-August 2006.

*Travel Warning, U.S. Department of States, Bureau of Consular Affairs, dated June 14, 2007.*

Based on the political and religious turmoil in Lebanon and the applicant's spouse's kidnapping in Lebanon in 1984 and its emotional and psychological ramifications, as described by the applicant's spouse, the AAO finds that the applicant's U.S. citizen spouse would experience exceptional hardship were he to accompany the applicant to Lebanon for a two-year period.

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 Lebanon. As stated by the applicant,

...If I were to return to Lebanon by myself while Imad [the applicant's spouse] remained in the U.S., Imad would still suffer exceptional hardship with my absence. Again, I would not be able to maintain a fertility treatment plan in Lebanon to meet our dreams of having children, which is heartbreaking for both of us after I suffered two miscarriages within one year. Imad would also worry about me as a Christian associated with the United States—he would worry to a degree that would interfere with his daily life, especially because I am a woman who will be subject to greater violence due to my gender. Imad would also have to bear the burden of a great deal of financial stress in my absence, resulting in a severe economic hardship.

*Affidavit of [REDACTED] dated March 8, 2007.*

[REDACTED] further discusses the mental health issues with respect to the applicant's spouse. As stated by

At the present time he [the applicant's spouse] also suffers from an Adjustment Disorder with Mixed Anxiety and Depressed Mood that developed in response to the stress attendant to his fears that his wife will be endangered if she returns to Lebanon, his pain about a possible separation from her, and his concerns that his opportunity to become a parent will be attenuated. It is clear that his symptoms have gotten worse recently and his level of distress and impairments in daily functioning are significantly higher than when I met him in January. [REDACTED] has difficulty falling asleep and wakes frequently during the night. His appetite is poor and he has lost weight. Sexual libido is diminished. [REDACTED] finds it

difficult to get out of bed in the morning, and although he genuinely enjoys his work, finds it nearly impossible to motivate himself to get up and go to his office. He would prefer to stay in bed all day, if only he could. This problem became worse last summer when there was a marked increase in conflict in Lebanon...He has trouble focusing, concentrating, and paying attention at work... mood is clearly depressed, increased by irritability and bouts of sadness. He has crying spells...

*Supra*, at 3.

Due to the political and religious turmoil in Lebanon, the documented mental health issues associated with the applicant's spouse's kidnapping in Lebanon in 1984, and the fears and anxieties experienced by the applicant's spouse with respect to his spouse's anticipated return to Lebanon for a two-year period, the AAO finds that the hardship the applicant's U.S. citizen spouse would suffer would go significantly beyond that normally suffered upon the temporary separation of families.

As such, upon review of the totality of the circumstances in the present case, the AAO finds the evidence in the record establishes that the applicant's spouse would experience exceptional hardship were he to relocate to Lebanon and in the alternative, were he to remain in the United States without the applicant, for the requisite two-year term.

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 her 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 she may request a DOS recommendation under 22 C.F.R. § 514. If the DOS recommends that the application be approved, the application must be approved. If, however, 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.