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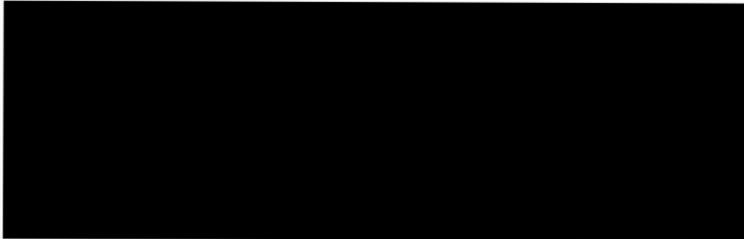


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 03 2008

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.

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 applicant is a native and citizen of Pakistan who entered the United States as a J-2, based on her derivative status as a spouse of \_\_\_\_\_ a J-1 visa holder.<sup>1</sup> She subsequently obtained J-1 status in May 2004 to pursue graduate medical training. She is thus subject to the two-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). The applicant presently seeks a waiver of her two-year foreign residence requirement, based on the claim that her U.S. citizen child, born in December 2006, 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 her two-year foreign residence requirement in Pakistan.

The director determined that the applicant failed to establish that her U.S. citizen child would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Pakistan. *Director's Decision*, dated December 18, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated January 4, 2008 and additional documentation about country conditions in 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

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<sup>1</sup> The record indicates that the applicant's spouse, a native and citizen of Pakistan, was admitted to the United States in June 1998 to participate in graduate medical training. As such, he is also subject to the two-year foreign residency requirement under section 212(e) of the Act.

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 her child would face in Pakistan:

... [the applicant's child] would suffer exceptional hardship if my husband and I were required to return to Pakistan to satisfy the two-year foreign residency requirement. Because he is so young, he will be susceptible to a host of deadly infections from the poor environment in Pakistan. Additionally, were Faiz to become ill, he would have no guarantee of adequate healthcare, as Pakistan is a third-world country with limited medical facilities and healthcare. My son [redacted] not only would face such medical hurdles, but he would also endure exceptional hardship if he lived in Pakistan due to the dangerous conditions and the prevailing anti-American sentiment and sectarian violence. Moreover, we would have limited and few financial resources in Pakistan. Physicians make an inadequate amount of money in Pakistan to support their families, especially women, whose career opportunities would be restricted due to prevalent sexism in Pakistan. Physicians and their families are also targeted for violence on a systematic level....

Pakistan has extraordinarily poor environmental conditions....Water and air pollution are serious problems in Pakistan, and the government does not act to alleviate these conditions. Drinking water is of very poor quality....Water pollution is a primary source of the transmission of diseases such as hepatitis, tuberculosis and typhoid, which are endemic in Pakistan. Water pollution also finds its way into the food chain, causing food poisoning. Malaria is also widespread in Pakistan, and children are very vulnerable to this disease. Approximately 50,000 people each year die from malaria in Pakistan. Since my son was born in the United States and has not spent significant time in Pakistan, he does not have any resistance to the diseases prevalent in Pakistan. He would most certainly be at great risk should he be forced to move to Pakistan....

If [redacted] were to become ill with one of the many rampant diseases in Pakistan, his life would be at risk due to the poor healthcare system. Pakistan's child health care services are not able to address the large number of children affected by contaminated water, food, and air.... My son falls into the age range of 0 to 5 years old that 70% of deaths were reported due to easily preventable ailments....I am worried he will not receive adequate health care to treat any diseases he may

contract. I fear that his health will be in danger if he were to return to Pakistan with me and my husband. Living in poor environmental conditions would clearly put enormous stresses on our son....

My husband and I will particularly face problems finding employment because we are trained in the U.S. There is a very high level of anti-American sentiment right now in Pakistan, and I am certain this will be an obstacle in our employment....

Furthermore, I will face great adversity if I attempt to find job in Pakistan. It will be very difficult for me to find work in Pakistan because of the poorly recognized sentiments towards women working, and because women's rights are extremely limited. If I was able to find a job, it would likely be one with very low pay because I am a woman. Without me earning at least a medium-range salary, we will be left impoverished....

The status of women in Pakistan is very low and women find themselves in an extremely vulnerable position in Pakistani society. Women are openly discriminated against and face tolerated violence in Pakistan. Women are often considered a social and economic liability by men....Women find no protection for their plight in the law. In fact, often the law is against women....I fear that my son Faiz will absorb the prevalent attitudes that females are not valuable members of society. I want my son to grow up learning to respect his mother and other female counterparts....

...This change in standard of living will lead to a compromise in the quality of my son's healthcare and childcare. It will affect everything from putting food on the table to providing shelter. Therefore, the low salary my husband and I will likely receive would cause our U.S. citizen son and entire family a tremendous economic hardship and uncertainty. Also, because my husband and I will lose the valuable skills we have learned in the US, we will not be very marketable for a job to return to the US. If my husband and I cannot find an employer to sponsor us for a visa to re-enter the US, our son will have to remain in the deplorable conditions in Pakistan for longer than two years.

In addition to the general criminal violence in Pakistan, there is also a threat very specific to physicians. The phenomenon of the specific targeting and murder of physicians in Pakistan in the last few years has many underlying causes. Physicians, being some of the most respected members of their communities, are frequently murdered to inflict psychological terror on the opposing community. As a result, Pakistani physicians are subjected to random and senseless violence. In addition to being afraid for my life, I am fearful of the risk of my son having to live without one or even both parents if my husband and I were to fall victim to such an act of senseless violence.

...Having worked and lived in the United States for an extended time, other members of the community would associate us with America. Anti-American sentiment is quite prevalent throughout Pakistan, and especially amongst those radical extremists most likely to murder a physician. If something were to happen to me, my son would be left to suffer an irreparable emotional loss, and he and my husband will be left destitute, as my husband would never be able to work and raise Faiz at the same time. My or my husband's absence would cause a devastating psychological impact on our son, as we are an emotionally close family. Worse yet would be if my son were kidnapped for ransom due to my and my husband's dual status as physicians coming from the US. There is no way my husband and I could secure our son's safety for every second of every day for two years.

The United States' involvement in the Middle East and South & Central Asia has inspired hatred against Americans amongst many people in the region, especially in Pakistan....

Additionally, members of terrorist groups...have infiltrated and spread throughout Pakistan. The flow of terrorists has increased since the U.S. invasion of Afghanistan, as members of al Qaeda and the Taliban have sought refuge in Pakistan.... The presence of these entities in Pakistan does not bode well for our U.S. citizen children, and I have great concern that they should not be thrust into such an environment.

This anti-American sentiment manifests itself in violent attacks against American interests and U.S. citizens in Pakistan....

I have great fear that my U.S. citizen son 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....

*Affidavit of* [REDACTED], dated July 24, 2007.

To corroborate the above, counsel has provided extensive documentation regarding the problematic political and social situation in Pakistan, anti-American sentiment in Pakistan, and the targeting of physicians and their families living in Pakistan. Moreover, a recently posted Travel Warning, issued by the U.S. Department of State, Bureau of Consular Affairs, dated September 21, 2007, states the following, in pertinent part:

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 December 5, 2006.

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 along the porous border with Afghanistan. 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. American fast food restaurants and other companies in Karachi were bombed in late 2005, resulting in several deaths and multiple injuries among Pakistani employees and customers. 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 in Karachi. Fifty-two others were wounded.

Fatal bomb attacks have occurred in Islamabad, Karachi, Peshawar, Quetta, Lahore, and other Pakistani cities in 2006 and 2007. Some of the attacks have occurred outside major hotels, market areas and other locations frequented by Americans. Other recent targets have included Pakistani government officials and buildings, and international NGOs.

*Travel Warning, U.S. Department of State, Bureau of Consular Affairs, dated September 21, 2007.*

The applicant also provides numerous letters from residents of Pakistan attesting to the political and social turmoil in Pakistan, the inherent risks for physicians residing in Pakistan, and anti-American sentiment. Dr. [REDACTED], a pediatrician in Pakistan, states the following regarding medical conditions in Pakistan:

I am a pediatrician...in Pakistan...I can attest to the fact that Pakistani medical facilities are not equipped with the sophisticated technologies that are considered commonplace in the United States. Thus, in the event that [REDACTED] [the applicant's child] were to become ill during his time in Pakistan, diagnostic and treatment modalities may hinder a proper and speedy recovery. As [REDACTED] will be under two years old at the time he would be forced to return to Pakistan with his family, he will instantly be more susceptible to disease, which exponentially increases the danger he would face if he were to become ill. Furthermore, there is no medical insurance in Pakistan, all expenses must be paid out of pocket. Getting a series of examinations is extremely expensive and could be cost prohibitive....

In addition, many infectious diseases like gastroenteritis, meningitis and malaria etc are significantly more common in Pakistan. In a young child less than 2 years of age such diseases can prove to be very serious....

*Letter from [REDACTED], Consultant, Shaukat Khanum Memorial Cancer Hospital and Research Center, Lahore, Pakistan, dated June 27, 2007.*

Dr. [REDACTED] a family physician in Pakistan, corroborates the anti-American sentiment in Pakistan:

...American-trained physicians are not recognized in Pakistan, and they have great difficulty to find jobs in their specialty....many in hiring coordinators will not hire someone they know is associated with the US, for fear of losing patients due to the high level of anti-Americanism. Also, it is now commonly known that physicians trained in the US may only be returning to Pakistan to fulfill a two-year residency requirement. Because of this fact, hiring coordinators in Pakistan do not want to hire a doctor they think will only work there for two years and leave....

*Letter from Dr. [REDACTED] The Medic Clinic & Vaccination Centre, Karachi, Pakistan, dated May 29, 2007.*

Based on the political and religious turmoil in Pakistan, anti-American sentiment and the emotional and psychological ramifications of such sentiments on a young, U.S. born child, the U.S. Department of State's position on travel to Pakistan by U.S. citizens, the targeting of physicians in Pakistan and the health concerns referenced above, 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.

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 because no one would be available to care for her child. As stated by the applicant,

...My husband was also on a J-1 clinical visa....We are both subject to the two-year foreign residency requirement....If our waiver petitions are denied, we will both have to leave this country....

Our U.S. citizen son, [REDACTED], is far too young to leave behind in America by himself, so we would need to take him with us to Pakistan. We do not have other family members in the United States who could take care of [REDACTED] for two years....

*Supra at 1*

As the record indicates, both the applicant and her husband are J visa holders subject to the two-year foreign residency requirement. Such a requirement would leave their young child in the United States without his parents. 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 her 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 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 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 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.