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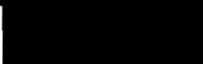
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JUL 10 2008

IN RE:



APPLICATION:

Application for Waiver of 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:

SELF-REPRESENTED

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 Syria who was admitted to the United States in J-1 nonimmigrant exchange status in June 2002 to participate in graduate medical training. He 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 his two-year foreign residence requirement, based on the claim that his U.S. citizen spouse¹ would suffer exceptional hardship if she moved to Syria temporarily with the applicant and in the alternative, if she remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Syria.

The director determined that the applicant failed to establish that his spouse would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Syria. *Director's Decision*, dated April 9, 2007. The application was denied accordingly.

In support of the appeal, the applicant submits the following: a brief; a letter from [REDACTED] M.D., University of Texas Health Science Center at Houston Medical School, regarding the applicant's spouse's medical conditions; information about country conditions in Syria; financial documentation with respect to the applicant and his family; articles about single-parent families and parenting; and a copy of the "Unborn Victims of Violence Act of 2004". 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

¹ Any statements made by the applicant and/or his spouse regarding hardships that their unborn child would face were the applicant to comply with his two-year foreign residency requirement are speculative and can not be considered by the AAO at this time.

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 spouse would experience exceptional hardship if she resided in Syria for two years with the applicant. To support this contention, the applicant's spouse states the following:

...As an American I will face significant, potentially life-threatening risks to my personal safety if I am forced to move to Syria to join my husband [the applicant]. Due in part to the turbulent political situation and the recent inflamed conflict in the Middle East, The region remains today in turmoil.

The recent incidence indicating the significant increase in violence in Syria, the Norwegian and Danish embassies burn, the most recent terrorist attack against the U.S. Embassy in Damascus, with the rising anti US sentiments and the war in Iraq and the war in Lebanon, these attacks underscore the presence of terrorist groups in Syria that have the ability and intent to target American citizens and their interests. I do not want to imagine being targeted by terrorists just because I'm a US citizen....

I visited Syria recently, the anti-U.S sentiments generated by Syrian government has sparked additional violence against U.S. citizens there....

I was visiting my critically ill mother when the war started, I was watching the news days and nights, lots of innocent people died, I was watching the death and destruction everywhere, we were terrified and we could not sleep for nights until I ran away with my to young American siblings....

...Syria's human right record remains poor. A state of emergency has been in effect since 1963. Security forces continue to commit numerous and serious human rights abuses....

The strained economy and the poverty the constant unrest in the country there are regular, kidnappings, murders, robberies and ongoing violence. Syria is not your average country. Because even in the best of neighborhoods, there are regular incidents and police raids are common. The constant fear for your safety is immeasurable.

The fact that I am American makes me a target, and makes my husband a target and a trader (sic) in their eyes and we will suffer, and we might die, because of the fact that I am American....

I'm currently a college student at Houston community college....There is no evidence could be found of a university in Syria offers an equivalent degree. Moreover, I can not obtain neither the assistance nor the materials in Syria to conduct the necessary research to continue with my career. In other words, if I lived in Syria it would terminate my pursuit of the degree....

When I visited Syria I had an anaphylactic shock and I needed to be in the intensive care unit for a few days and because of the poor health care the physicians were not able to explain my medical problem and they recommended tests that are not available in Syria. I believe that I was under treated. This health issue is life threatening if the condition is not appropriately monitored and adequate care is not received....

Affidavit of [REDACTED] dated December 16, 2006.

To corroborate the above, the applicant has provided documentation regarding the problematic political and social situation in Syria. Moreover, a Travel Warning regarding travel to Syria by U.S. citizens, issued by the U.S. Department of State, Bureau of Consular Affairs dated April 15, 2008, states, in pertinent part, the following:

This Travel Warning alerts U.S. citizens to ongoing safety and security concerns in Syria. American citizens are urged to thoroughly consider the risks of travel to Syria and to take adequate precautions to ensure their safety. This supersedes the Travel Warning for Syria issued on September 18, 2007.

A number of terrorist groups that oppose U.S. policies have offices in Syria. Since 1979, the United States has designated Syria a State Sponsor of Terrorism due to its support for organizations such as Hizbollah, Hamas, and Palestinian Islamic Jihad. In addition, other extremist groups are present in Syria. These groups have the potential to be either the targets of or perpetrators of acts of violence. On February 12, 2008, an explosion occurred in the residential Kafer Soseh neighborhood of Damascus, killing Imad Moughniyeh, a senior Hizbollah operative. In 2006, the U.S. Embassy in Damascus was attacked by terrorists armed with guns, grenades, and a car bomb. The Syrian Government has allowed anti-U.S. demonstrations to occur; the latest was on March 3, 2008. Anti-U.S. demonstrations date back to September 2005, some of which have turned violent and led to damage to Western embassies, including the U.S. Embassy.

U.S. citizens who remain in or travel to Syria are encouraged to register at the consular section of the U.S. Embassy in Damascus, and to obtain updated information on travel and security in Syria. Americans in Syria should exercise caution and take prudent measures to maintain their security. These measures

include being aware of their surroundings, avoiding crowds and demonstrations, keeping a low profile, varying times and routes for all travel, and ensuring travel documents are current.

Travel Warning, U.S. Department of State, Bureau of Consular Affairs, dated April 15, 2008.

Based on the political and social turmoil in Syria, the applicant's spouse's medical condition and her past negative experience with medical treatment in Syria, and the security concerns for U.S. citizens referenced above, the AAO finds that the applicant's U.S. citizen spouse would experience exceptional hardship were she to accompany the applicant to Syria for a two-year term.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would suffer exceptional hardship if she remained in the United States during the two-year period that the applicant resides in Syria. As stated in the applicant's appeal brief,

...Mrs. [REDACTED] [the applicant's spouse] a U.S. citizen is currently in school she enrolled attempting to further herself. And to bring her education status in balance with that of her husbands.

Without her husband she will not be able to continue her education because he will not be there to pay for her schooling....

Mrs. [REDACTED] does not have a job she is totally dependent on her husband. If her husband is forced to leave the country while she is pregnant without a job or any means to support herself it will be a complete and total violation of the 'unborn child act'. And an absolute attempt to harm the mother and child given all and the totality of the circumstances....

Brief in Support of Appeal.

The applicant provides a letter regarding his spouse from [REDACTED], which the AAO notes is undated. [REDACTED] concludes as follows:

... [REDACTED] [the applicant's spouse] is a 26-year old pregnant woman, who has been is my patient for the last two years. Mrs. [REDACTED] present to me on 4/16/07 with the following symptoms:

For the past three months Mrs. [REDACTED] has been in a depressed mood, she cries very frequently without reason most of the times, she finds it harder to concentrate on simple tasks most of the day nearly every day.

Despite always feeling exhausted, she has been having trouble falling asleep, she has poor appetite, and 5 pounds weight loss...and has significant anxiety....

█'s symptoms varies from depressed mood and intense sadness and emotional distress to anxiety and irritability and neurovegetative symptoms of depression such as loss of energy changes in sleep, appetite, and weight loss.

The above mentioned symptoms are indicative of severe depression....

Mrs. █ with will need referral to psychotherapy for further treatment....

Letter from █, MD, BS, University of Texas Health Science Center at Houston Medial School.

The record indicates that the applicant's spouse is integrated into the U.S lifestyle and educational system; she is currently pursuing her college degree while relying on the applicant to support her emotionally and financially. The Board of Immigration Appeals (BIA) found that a U.S. citizen spouse who was in pursuit of an advanced degree and was thus completely dependent on her spouse for support would encounter exceptional hardship if her spouse's waiver request was not granted. *Matter of Chong*, 12 I&N Dec. 793, Interim Decision (BIA 1968). The AAO finds *Matter of Chong* to be persuasive in this case due to the similar fact pattern. Were the applicant's waiver request denied, his spouse would have to cease the pursuit of her studies as she would need to find employment to support herself financially, all without the continued support of her husband. Such a disruption at this stage of her education would be significant as to constitute exceptional hardship.

The record, reviewed in its entirety, supports a finding that the applicant's U.S. citizen spouse will face exceptional hardship if the applicant's waiver request is denied. 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 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.