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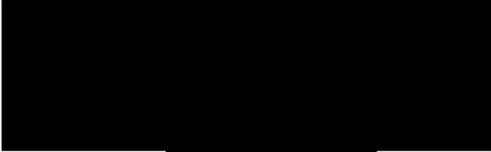
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20 Massachusetts Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date **MAR 24 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 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 is a native of the West Bank (now part of the Occupied Territories) who obtained J-1 nonimmigrant exchange status on June 21, 1997 to participate in a program funded by the U.S. 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 lawful permanent resident spouse and two U.S. citizen children, born in 2004 and 2006, would suffer exceptional hardship if they moved to the West Bank temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled the two-year foreign residence requirement in the West Bank.

The director determined that the applicant failed to establish that her spouse and/or children would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in the West Bank. *Director's Decision*, dated September 4, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated October 3, 2007; a copy of an AAO decision; a letter from the applicant, dated September 30, 2007; case law with respect to waivers; a copy of an article written in regards to hardship waivers; additional information about country conditions in Israel and the Occupied Territories; a copy of the applicant's college transcript; articles about peanut allergies and their health ramifications; and a copy of the applicant's receipt notice for the Form I-612 submission, dated July 19, 2007.<sup>1</sup> In addition, on November 19, 2007, counsel sent a correction notice with respect to the appeal brief. 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,

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<sup>1</sup> Counsel references in his brief that the applicant was previously granted an Alien number ( [REDACTED] ), which was utilized on numerous immigration documents issued to the applicant, including an Employment Authorization Card from July 2003, an H-1B Approval Notice (Form I-797) from August 2004, and the receipt notice for her Form I-612 application from July 2007; counsel thus contends that the number listed on the Director's Decision ( [REDACTED] ) is incorrect. Based on a review of the record, it appears that the applicant was issued an Alien number for purposes of generating an Employment Authorization Card in 2003. However, that number does not correlate to a paper file. As such, the correct Alien number for the applicant is [REDACTED], as referenced in the Director's Decision and in the instant decision.

(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 children would experience exceptional hardship if they resided in the West Bank for two years with the applicant. To support this contention, the applicant states the following:

...The conditions in the West Bank continue to deteriorate with every passing day. I strongly fear for my children’s safety. My children will be in great danger and their lives will be exposed to extreme hardship.... They will live every day in an unsettling and volatile environment where shootings, ongoing clashes, military operations, home demolition and suicide bombings are the norm. Deadly violence erupts on a regular basis; there is no distinction between innocent bystanders, children learning inside school premises, the elderly or disabled, and armed fighters and gun men. Such violence results in the death of many innocent children and women....

The situation is so bad that the Department of State has issued a travel warning urging U.S. citizens to defer travel to the West Bank and to avoid all travel to the Gaza Strip.... The warning also prohibits U.S. Government American personnel and dependents from traveling to any cities, towns, or settlements in the West Bank, except for mission-essential business or other approved purposes.... Both of my children are American citizens and should not travel to the West Bank.

In addition to running the risk of physical harm, my children will live and experience collective punishment including closures, curfews and restrictions of movements. Curfews mean being confined to the house for several days without the ability to access food, water and medical care. Such circumstances can prove to be deadly and constitute hardship to my children.

Furthermore, I want to protect my children from day to day terror, exposure to ongoing danger and witness[ing] the armed fighting, shooting and death. Researchers on post traumatic stress disorder pointed out that the impact of witnessing violence on children is profound and harder than actually being in such dangerous situations. For example, if you were to watch Palestinian children playing games, they enact shooting each other, run from imaginary fire and perform first aid on an injured child, playing suicide bombers. Their drawings are no different which include pictures of blood, hospital beds, guns, tanks, houses on fire and ambulances.... I want to protect my children from this ideology and from playing such games and from the life long debilitating psychological impact these games will have on them should they be in the West Bank....

The situation in Israel, Gaza and the West Bank remains extremely volatile with continuing attacks, confrontations and clashes.... Currently, in the West Bank, the situation is extremely volatile between Hamas supporters and the President's supporters, and violence may erupt at any moment, which will further worsen the security situation in the West Bank.

Sadly, the number of Palestinian deaths more than tripled between 2005 (215) and 2006 (678); almost a fifth were children (127 in 2006), nearly four times as many as in 2005. Unfortunately, children represent 20% of total fatalities in the West Bank and Gaza, and over 12, 300 children were severely injured.... These children did not see any specific threat to their lives, they were innocent bystanders. My children will not be any different from any of these children, and bringing them to the West Bank will put them in the same physical danger and expose them to the same risks....

Another exceptional hardship would be managing my son's [REDACTED] food allergy where access to health care and emergency rooms can be impossible due to checkpoints, restriction of movement and curfews. [REDACTED] (3-year old) is severely allergic to peanuts and tree-nuts. Nuts allergy is one of the most serious and dangerous type of allergies. Exposure to even traces amounts of nuts requires immediate treatment. It induces a severe anaphylactic reaction which requires an instant epinephrine injection and immediate hospitalization. A delayed treatment would result in exacerbation of the anaphylactic reaction which may result in death within a short period of time....

I respectfully disagree with the USCIS officer when he said that the whole situation can be avoided by avoiding nuts. In the West Bank avoiding nuts is a very challenging nightmare. Food labeling regulations do not exist. It is extremely difficult to know whether a food contains nuts, traces of nuts or even [is] manufactured in a place processing nuts. As of now, [REDACTED] can not consume any nuts, any thing manufactured in a facility that processes any nuts; he can neither

touch nuts nor be around them...the first anaphylactic reaction [REDACTED] has experienced due to nuts which resulted in him being at the emergency room was triggered after one of our friend who was visiting from West Bank gave him half a cashew.... It is very different hailing from the culture and region where allergies are not prevalent to know or understand [REDACTED] situation leave alone be attentive 24/7. In addition, schools in West Bank are not equipped or trained to take care of children with food allergy; schools do not have doctors or nurses working on site.

Additionally, due to the ongoing conflict Palestinian health infrastructure is severely damaged. Respectfully, I have to disagree with the USCIS officer who compared the health care system in Israel to the US and assumed this is the same in the West Bank. There is no comparison between the two. The health care system in Israel is very good but this is not the case in the West Bank and Gaza where my children are going to be. The health care system in the West Bank and Gaza is lacking several resources such as equipment, medicines and financial support. The closure and curfews have lowered health standards by preventing access to hospitals and clinics. Every year several people who are seeking immediate medical help die at checkpoints and due to difficulty of movements....

My children were born in the United States and entitled to live in the United States and receive good education. If my children had to live in the West Bank, they will suffer from inadequate education system.... According to the United Nations Children's Fund (UNICEF), some 300 Palestinian schools have been damaged in the conflict, and in 2003, 580 schools were periodically forced to close. The USCIS officer believes that the education system is adequate since I was able to get my education in the West Bank.... However, I would like to point out that it took me 7 years to finish my 3 years Bachelor degree, mainly due to school forced closures....

...If we were go back to the West Bank under these circumstances, my children will be forced to live in poverty, physical danger, poor health care system and inadequate education....

*Letter from [REDACTED] dated September 30, 2007.*

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

This Travel Warning is being issued to update information on the general security environment in Israel, Jerusalem, the West Bank, and the Gaza Strip, and to reiterate threats to American citizens and U.S. interests in those locations. The Department of State urges U.S. citizens to remain mindful of security factors when considering travel to Israel and Jerusalem at this time. In addition, the

Department of State urges U.S. citizens to defer travel to the West Bank and to avoid all travel to the Gaza Strip. This warning supersedes the Travel Warning issued January 17, 2007.

American citizens in the Gaza Strip should depart immediately, a recommendation that the State Department has maintained and renewed since the deadly roadside bombing of a U.S. Embassy convoy in Gaza on October 15, 2003. This recommendation applies to all Americans, including journalists and aid workers.

The Gaza Strip has witnessed considerable violence in recent months, both between Palestinian factions and between Israeli security forces and armed Palestinian groups. Similar incidents have also occurred in the West Bank. Violent demonstrations, kidnappings and shootings have also occurred in both the Gaza Strip and the West Bank. Areas of violent conflict shift rapidly and unpredictably. Militants have continued to abduct Western citizens, and terrorist organizations have threatened attacks against U.S. interests. Hamas, a designated foreign terrorist organization, violently assumed control over Gaza in June 2007, making the already dangerous security situation there even more precarious. The American International School in northern Gaza was the target of an attack on April 21, 2007.

Militant groups in Gaza persist in launching rocket attacks against nearby Israeli towns. The IDF (Israeli Defense Forces) often responds to such attacks. It also continues to carry out security operations in the West Bank, including targeted attacks and ground incursions, which have led to deaths and injuries to bystanders. Rocket fire from Lebanon, except for one recent incident, has ceased since the passage of UN Security Council Resolution 1701 in August 2006.

Some Americans and Europeans involved in demonstrations and other such activities in the West Bank have become involved in confrontations with Israeli settlers and the IDF. The State Department recommends that Americans, for their own safety, avoid demonstrations.

For safety and security reasons, U.S. Government American personnel and dependents are prohibited from traveling to any cities, towns, or settlements in the West Bank, except for mission-essential business or other approved purposes. For limited, personal travel, U.S. government personnel and family members are permitted to travel through the West Bank using only Routes 1 and 90, to reach the Allenby/King Hussein Bridge or the Dead Sea coast near Ein Gedi and Masada. They are also permitted to travel north on Route 90 from

Allenby/King Hussein Bridge to the Sea of Galilee. All of these routes are for transit only, with stops permitted only at Qumran National Park off Route 90 by the Dead Sea. Each such transit requires prior notification to the Consulate General's security office and must occur during daylight hours. U.S. Government personnel and family members are permitted both official and personal travel on Route 443 between Modi'in and Jerusalem without prior notification, during daylight hours only. Travel to the Gaza Strip by U.S. Government personnel is prohibited. The Department of State strongly recommends that private American citizens not travel to the Gaza Strip. Those in Gaza should depart immediately.

All travelers who enter or travel in the West Bank should exercise particular care when approaching and traveling through Israeli checkpoints and should expect delays and difficulties. Travelers should also be aware they might not be allowed passage through checkpoints.

*Travel Warning-Israel, the West Bank and Gaza, U.S. Department of State, Bureau of Consular Affairs, posted July 13, 2007.*

Numerous documents have been provided that corroborate the assertions made by the applicant with respect to the problematic conditions and safety concerns for U.S. citizens residing in the West Bank. Moreover, evidence has been provided to document the applicant's child's serious medical condition, namely peanut allergies. As such, based on the U.S. Department of State's position on travel by Americans to the West Bank, the social and political turmoil in the West Bank, and Omar's documented medical issues and the likelihood of not having access to appropriate medical care should the need arise, residing in the West Bank would likely lead to exceptional hardship for the applicant's two U.S. citizen children. As such, the AAO concludes that the applicant's U.S. citizen children would experience exceptional hardship were they to accompany the applicant to the West Bank for a two-year term.

The second step required to obtain a waiver is to establish that the applicant's spouse and/or children would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in Pakistan. As stated by the applicant,

...The suggestion of the USCIS officer that I leave my children back in the United States is not feasible. Leaving my two young children behind in the US, of whom one is still nursing, will create a severe emotional hardship to my kids. Young children need their mothers. In the United States, 86% of the one-parent families are headed by mothers. I hold a strong belief that a child's formative growing years, the years of learning, bonding, playing, security, developing a value system of the right and wrong can be taught by both mother and father. A study in the New England Journal of Medicine, has demonstrated that unequivocally children need two parents. The study showed that the risk of a

poor outcome is much higher for children in single-parent families than for those in two-parent families. Six nationally representative data sets demonstrate that children growing up in single-parent households, whether the parents were never married or have separated or divorced, have twice the risk of repeating a grade in school, having behavioral problems, or dropping out of high school, and being out of work, and girls have twice the risk of becoming teenage mothers....

*Id.* at 5.

Ph.D., Clinical Psychologist elaborates on the statements made by the applicant. As stated

...Both children are very young and vulnerable to the trauma that loss of a parent would bring. [REDACTED] is just a toddler and he is quite attached to his mother. He is likely to become depressed and extremely stressed by her sudden departure. Such emotional scars tend to last for a lifetime. [REDACTED] is currently breastfeeding her daughter, [REDACTED]. To lose that vital connection with her mother would be detrimental to her long term health both physically and psychologically. Infants who lose their attachment to their mothers suddenly and for such a long period of time tend to struggle with long-term problems with depression and attachment disorders. Having worked with families who reunite after prolonged separation due to immigration problems, I know firsthand how difficult it is for them to reunite. Children so young tend to be unable to recognize or connect with the lost parent. They may be angry with this parent when they are reunited and have trouble with acting out that anger inappropriately....

*Letter from [REDACTED], Ph.D., L.P., Clinical Psychologist, dated April 16, 2007.*

Articles regarding the negative ramifications of separating young children from their mothers have also been provided. The AAO concurs with the applicant that separating two young children from their mother, taking into account that the applicant is still breast-feeding one of the children, would constitute exceptional hardship to the applicant's children.

The AAO thus finds that the applicant has established that her children would experience exceptional hardship were they to relocate to the West Bank and in the alternative, were they 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 concludes that the evidence in the record establishes the hardship the applicant's children 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.<sup>2</sup>

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<sup>2</sup> As a finding has been made by the AAO that exceptional hardship to the applicant's two U.S. citizen children exists, there is no need for the AAO to analyze whether exceptional hardship to the applicant's lawful permanent resident spouse has been established.

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.

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