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**U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 21 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 Lebanon who was admitted to the United States in J1 nonimmigrant exchange status in June 2001 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).¹ The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen child, born in July 2002, would suffer exceptional hardship if she moved to Lebanon 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 Lebanon.

The director determined that the applicant failed to establish that his child would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Lebanon. *Director's Decision*, dated September 13, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated October 15, 2007. 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

¹ The record indicates that the applicant's spouse entered the United States as a J2, based on her derivative status as a spouse of the applicant, a J1 visa holder. As such, the applicant's spouse is also subject to the two-year home residency requirement.

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 she resided in Lebanon for two years with the applicant. To support this contention, the applicant states the following:

...Our daughter, [REDACTED], was born on July 23, 2002....She is a US citizen....

...returning to Lebanon will be directly in conflict with the health and safety of my daughter. My daughter would be at risk, and the environment in Lebanon would not be safe, physically or mentally, for a girl with her US upbringing. The key facts that would directly threaten her essential welfare are the continuing religious and sectarian intolerance, the rise of Islamic fundamentalism, the prevalent anti-US sentiment in Lebanon, the deteriorating economy, the weak central government, and the ongoing threat of war....

Lebanon is currently not safe for US citizens and those associated with the United States. The country has suffered from around two decades of civil war and intense conflict with neighboring countries, and the situation remains extremely volatile. Acts of violence against civilians are a constant threat present in the life of Lebanese residents, and civil infrastructure has been severely damaged across the country. International influence has considerably exacerbated the tumultuous political and civil strife in the country, resulting in substantial resentment of foreigners. This is particularly applicable in our case, as resentment of US and Israeli involvement is preeminent....

On December 22, 2006, the US Department of State issued a Travel Warning for all US citizens to leave the country and/or refrain from traveling there because of safety and security concerns. In short, our concerns for our daughter’s safety are not just our unreasonable fears, they are confirmed by official US government policy....

In July, 2006, Israeli forces invaded Lebanon after Hezbollah, a militant faction operating in the south of Lebanon, attacked Israel....The attacks by both sides ruptured many efforts by the Lebanese government and international aid initiatives to rebuild the country after the civil war and develop social stability. The recent attacks display the volatility of the current situation in and surrounding Lebanon. Progress towards establishing safety and the ability to live peaceful lives for Lebanese residents is persistently threatened by the decades of violent instability in the region, which shows no appreciable indication of abatement.

In addition to this violence within the country, Lebanon is home to a significant anti-United States sentiment. This sentiment is in large part due to the close alliance with the US and Israel....

The anti-US sentiment is evident in persistent acts [of] violence against US targets. Fast food restaurants associated with the US such as Pizza Hut and Kentucky Friend Chicken have often been the targets of bombing.

Noor, as a US Citizen, would be subjected to hate and violence because of her nationality and the US values with which she is currently being raised. Our whole family would be targets of anti-US sentiment. My wife and I have both spent the last six years in the United States, and many Lebanese people will see us as having been corrupted by US influence.

A US citizen child would also encounter extreme difficulty due to the lack of adequate support for raising children. In addition to the culture shock of transitioning to an entirely different culture and the prevalence of anti-US sentiment in Lebanon, the environment for raising a young child in Lebanon is particularly disadvantaged. Schools and other civil infrastructure suffer greatly from lack of funding and significant damage from the years of civil war and regional conflicts. Children are constantly exposed to the ramifications of war and violence, including numerous deaths of friends and family, the displacement of newly made orphaned children and homeless and constant reminders of the presence of violence. In addition, children are much more prone to risk from the much more tangible aftereffects of war and violence, including the presence of landmines and debris. The psychological effect this atmosphere exerts on young children is extremely traumatic, particularly for a young child also coping with the stress of moving to a culturally disparate country....

Physicians in Lebanon often lack basic funding and resources to provide quality health care, and the lack of funding creates financial difficulty for practicing physicians. The infrastructure of Lebanon does not have the vigor to support the trained physicians that the country has available. Physicians who do practice do not receive the financial benefit from the difficult work they perform.

Our family would be severely strained financially because of this, and we would encounter difficulty affording [redacted] the adequate necessities for her development. I would have extreme difficulty finding an appropriate job, as Lebanon's medical economy cannot support specialists in the medical profession. Moreover, as a physician eligible for license for general medical practice, I would be the only member of our family with skill in demand enough to reasonably find an

employment position in Lebanon. Even then, my compensation would be moderate....

Public schools are dramatically insufficient for providing an adequate education in Lebanon, and because of the limited earning capacity our family would have, private school costs would be practically prohibitive....

She [the applicant's child] has made us very proud in her early years. She has progressed very far, and she is now beginning school. Pre-school has been very exciting for our daughter... [redacted] is a very engaged child, and she loves her teacher, her friends, and her after school activities, including swimming, tap dancing, ballet, and gymnastics....

I was raised in a reasonably tolerant environment at home. My mother is a Protestant Christian, and for many years I was raised Christian. However, I am considered to be Shiite Muslim by birth, and I discovered my socio-religious heritage and the culture that accompanies it at a much later age....I encountered considerable confusion concerning my mixed heritage in a country so divided along religious lines, and this extended to later in my life....

We have endeavored to raise Noor in a tolerant environment, but we very much fear the effects that deeply divided religious intolerance would have on a developing child with a very delicate awareness of her cultural heritage....

Already exposed to the strain of moving to a country with an extremely unfamiliar culture and different values from those she has been taught, Noor would be at much greater risk of failing to recover from the trauma of war or violent outbreaks....

Landmines constitute a major threat to the children of Lebanon. According to the Daily Star, a Lebanese English newspaper, two people are killed or wounded every day in Lebanon due to remaining ordinances, particularly cluster bombs. This problem is particularly severe for children, naturally inquisitive and less aware of the dangers of the hostile environment in Lebanon....

Aside from these persistent dangers, Lebanon continues to be plagued by terrorist attacks on civilians from various factions....

The troubles in Lebanon have touched my family deeply. My father's brother-in-law was killed as a direct result of the violence in Lebanon in the early eighties and my father died from a heart attack in 1986 after seeing his businesses take significant set backs directly from the violence, the segregation, and the ensuing market inflation that year....I worry greatly for my mother and brother and other family still in the country....

The troubles in Lebanon have also touched me deeply in my growing years. I have many sad memories of primary school classmates who died at a young age because of the violence in Lebanon and many other disturbing memories of death, destruction, and disabilities. My memories pinnacle by having personally survived six direct bombing hits extremely close to me between the ages of seven and eighteen years: Three missile bombs during outbreaks of violence, one evening booby bomb six floors directly below my bedroom balcony, four booby bombs set to detonate minutes apart just before 8 am one morning and planted in neighborhood garbage dumpsters along the main street that I used to walk on everyday to go to school, and one car bomb about twenty meters behind me on a street corner one afternoon while on my usual weekend outing with my Dad at the age of eleven years....Though I knew I was blessed with life and health, it did change me as a child. Fear was a common headline and hypothalamic and limbic responses were the norm. It took me a very long time to be able to walk again between parked cars and through parking lots without hurrying or worrying. I later realized in retrospect after attending medical school that it was probably Post-Traumatic Stress Disorder. I cannot imagine what other children may have gone through and still are in Lebanon.

With this realization and with the continuing lack of well-developed child support services in Lebanon, with adults scrambling for survival or for domination in a precarious conflict-torn country and region, and now, as a Pediatrician and advocate for children, and most of all, as a father to [REDACTED], I have come to understand the profound implications on the growth, development, and well-being of a child—every child—when raised in a time and place of civil and armed human conflict. I could not in good conscience bring our four-year old daughter into this environment....

Affidavit of [REDACTED], dated March 23, 2007.

The applicant's spouse further elaborates on the hardships their daughter would encounter were she to relocate to Lebanon for two years:

...Although we are not activists, my husband's family is visible in Beirut. His uncle, [REDACTED] is Chief of the Ob/Gyn Department at the American University of Beirut. Another uncle, [REDACTED] is a member of the Lebanese Parliament, representing a tumultuous section of South Lebanon. His second cousin, [REDACTED] is the head and owner of the main English newspaper in Lebanon, the Daily Star. Our family is associated with political figures of the ilk that have been assassinated recently, and because of our added association with the United States, we would be prime targets for extremists. As a US citizen, our daughter, Noor, would be at increased risk as a pseudo-political

target. In addition, my husband and I would also be construed as political targets, forcing [REDACTED] to face the possibility of losing a parent to violence....

[REDACTED] very much relies on the security we provide at her young age. [REDACTED] will still sometimes cry herself to sleep if I am away for more than a day or two. In many ways, [REDACTED] is a very typical child, she is developing well with her new classmates in pre-school, learning social skills and developing her cognitive and motor functions. Like the other US citizen children in her class, she is learning values that are highly prized in the United States: tolerance, respect for authority, kindness to others, and the value of applying one's self.

If we were forced to return with her to Lebanon, her learning process would be dramatically interrupted.

More importantly, [REDACTED] would be at high risk of physical harm or risk of extreme duress from the loss of her parents, loved ones, or friends. In a country torn by war and violence, [REDACTED] would lose her sense of safety. This loss would be for good reason, and my husband and I would lose our sense of safety and security, as well, particularly with regards to the safety of our daughter....

Affidavit of [REDACTED] dated March 14, 2007

To corroborate the above statements, counsel has provided a number of articles and support letters from residents of Lebanon, attesting to the problematic political, social and religious situation in Lebanon. Moreover, a Travel Warning, issued by the U.S. Department of State, Bureau of Consular Affairs, dated April 21, 2008, states the following:

This Travel Warning updates information on security threats and ongoing political tensions in Lebanon, and informs U.S. citizens of current safety and security concerns. The Department of State continues to strongly urge that Americans defer travel to Lebanon and that American citizens in Lebanon consider carefully the risks of remaining. This Travel Warning supersedes the Travel Warning for Lebanon issued on October 17, 2007.

The U.S. remains concerned about the threat of terrorist attacks against Western and Lebanese government interests in Lebanon. Groups such as Al-Qaeda and Jund al-Sham are present in Lebanon, and they have issued statements calling for attacks against Western interests. The Department of State is also concerned that the clashes between terrorist extremists and the Lebanese Armed Forces that occurred in the Nahr al-Bared refugee camp in northern Lebanon from May to September 2007 could occur in other camps in Lebanon. U.S. citizens who visit refugee camps in Lebanon risk becoming trapped during hostilities.

There have been several assassinations of military and political figures in Lebanon within the past year. On December 12, 2007, a senior member of the Lebanese Armed Forces was killed by a car bomb; a Lebanese Internal Security Force officer was killed in a similar fashion on January 25, 2008. Two anti-Syria Members of Parliament were assassinated in separate car bombings in Beirut in June and September 2007. On January 15, 2008, an Embassy vehicle was damaged and two Embassy employees were injured in yet another bombing. In each of these incidents innocent bystanders have been injured or killed.

On June 7, 2007, a bomb exploded in the town of Zouk Mousbeh, north of Beirut. This followed the discovery of explosive-laden vehicles in Eastern Lebanon. Since May 20 2007, explosions have occurred in the Beirut neighborhoods of Achrafieh and Verdun, the Beirut suburb of Sad Al-Bouchrieh, and the resort town of Aley.

The terrorist group Hizballah has threatened retaliatory actions for the assassination of Hizballah official Imad Fayeze Mugniyah, who was killed in Syria by unknown assailants on February 12, 2008. Prominent members of Hizballah have intimated that they hold the United States partially responsible for Mugniyah's death, and it is possible that someone may lash out against U.S. interests or persons.

Landmines and unexploded ordnance pose significant dangers throughout southern Lebanon, particularly south of the Litani River, as well as in areas of Lebanon where civil war fighting was intense. More than a dozen civilians have been killed and over 100 injured by unexploded ordnance following the armed conflict in July-August 2006. Travelers should watch for posted landmine warnings and strictly avoid all areas where landmines and unexploded ordnance may be present.

The Department of State strongly urges U.S. citizens to defer travel to Lebanon, and urges U.S. citizens already in Lebanon to carefully consider the risks of remaining. U.S. citizens who choose to remain in Lebanon are encouraged to maintain a high level of vigilance; confirm and maintain the validity of their passports and other U.S. travel documents for themselves and their family members; monitor the local security situation and be ready to depart quickly in the event of any deterioration in the situation.

U.S. citizens traveling to Lebanon or resident in Lebanon should be aware the U.S. Embassy has limited ability to reach all areas of Lebanon. The Embassy cannot guarantee that Embassy employees can render assistance to U.S. citizens

in areas where there is limited government control, such as the southern part of Lebanon where Hizballah continues to be active.

In a crisis situation, U.S. citizens are responsible for arranging commercial or private means of transportation to depart Lebanon. If evacuation is warranted, only when all other transportation options are unavailable will the U.S. Government assist U.S. citizens in leaving a country. This service will be provided on a cost-recovery basis, which means the traveler must reimburse the U.S. government for the cost of the travel. The lack of valid travel documents will slow the U.S. embassy's ability to provide assistance.

The Department of State considers the threat to U.S. government personnel in Beirut sufficiently serious to require them to live and work under strict security restrictions. These practices limit, and may occasionally prevent, access by U.S. Embassy officials to certain areas of the country. Unofficial travel to Lebanon by U.S. government employees and their family members requires prior approval by the Department of State.

Travel Warning, U.S. Department of State, Bureau of Consular Affairs, dated April 21, 2008.

Based on the political and social turmoil in Lebanon, the security concerns with respect to U.S. citizens as determined by the U.S. Department of State, the applicant's child's unfamiliarity with the country, its language and its customs, and the applicant's and his spouse's past traumatic experiences while residing in Lebanon and the emotional and psychological effect of said experiences on a young child, the AAO finds that the applicant's U.S. citizen child would experience exceptional hardship were she to accompany the applicant to Lebanon for a two-year term.

The second step required to obtain a waiver is to establish that the applicant's child would suffer exceptional hardship if she remained in the United States during the two-year period that the applicant resides in Lebanon. 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 Lebanon because no one would be available to care for his child. As stated by the applicant,

...I married [REDACTED] on January 25, 2001 in our home city of Beirut, Lebanon. She maintains J-2 status she has derived from me.

As she derived her J-2 status from me, my wife is also subject to the J two-year home residency requirement. Noor [the applicant's child] must either return to Lebanon with us, or spend two years of her childhood apart from both of her parents....

Supra at 1.

As the record indicates, both the applicant and his wife are J visa holders subject to the two-year home residency requirement. Such a requirement would leave their young child in the United States without her parents. By default, this situation would constitute exceptional hardship to the applicant's child.

The AAO finds that the applicant has established that his child would experience exceptional hardship were she to relocate to Lebanon and in the alternative, were she 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 record, reviewed in its entirety, supports a finding that the applicant's child 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.