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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 21 2008**

IN RE: [REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State (DOS), Waiver Review Division (WRD).

The record reflects that the applicant is a native and citizen of Syria who entered the United States in J-1 nonimmigrant exchange status on June 22, 2004 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 May 2006, would suffer exceptional hardship if he moved to Syria temporarily with the applicant and in the alternative, if he 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 child would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Syria. *Director's Decision*, dated November 13, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated January 3, 2008 and additional information about the problematic country conditions in Syria. 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

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.

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 child would experience exceptional hardship if he resided in Syria for two years with the applicant. To support this contention, the applicant states the following:

...My American young son will suffer tremendously if he returned to Syria with me, for the following reasons:

- (a) as an American citizen, my young son would be subject to persecution and risk of violence due to the political unrest and terrorism against Americans that is rampant in Syria...
- (b) he would suffer from severe financial hardships that would be forced upon us, due to the requirement that I serve in the Syrian military upon my return to Syria (I would have very little income during my years in the Syrian military and would be unable to support my young son and wife)...
- (c) he would be forced to attend poorly regarded Syrian schools, which are rampantly anti-American, poorly regarded, and with the course of instruction in Arabic, a language not well understood by him;
- (d) he would risk the possibility of being denied the opportunity to return back to the USA, due to deteriorating relations between Syria and the U.S.; and
- (e) he would face the risk of severe health problems due to the lack of medical services available coupled with my inability to be able to afford even basic medical treatment/care (as immediate payment is nearly always required in advance of medical service)....

...Syria has been on the U.S. State Department’s list of countries sponsoring terrorism since the list’s inception in 1979.

The U.S. State Department has continues to warn Americans to defer any and all travel to Syria, due to concerns for safety of Americans.

Recent events in the Middle East with respect to war with Iraq have resulted in increasing hostilities against Americans and American interests in Syria....

My U.S. citizen young son will face serious and real threats of physical violence and potential death due to the increasing anti-American sentiment in Syria....

Further recent developments with respect to the war in Lebanon, have resulted in increasing negative pressures on the relations between the United States and Syria.

I would be financially unable to support my American young son in Syria....

If I return to Syria, I will be required to fulfill the mandatory military service...during this time of military service, I will likely serve in areas of danger and will have very little income. Additionally, the Syrian government can chose (sic) to extend my military service for any reason.

During my military service, the average income for a physician is \$40 per month, which is also not sufficient to support my American young son.

As a result of not being able to financially support my young son, he would suffer exceptional hardship as he would not have sufficient funds upon which to reasonably live.

The educational system is poorly funded and equipped compared to that in the United States, with less than 4% of GNP spend on education each year....

If my young son are (sic) required to travel to Syria for any period of time, he would be required to enroll in Syrian schools, which are rampantly anti-American, poorly regarded, with the language of instruction is entirely in Arabic, which is not well understood by my son; and

As a result of the poor educational opportunities in Syria, my son's education would suffer tremendously....

As a third world country, Western style medical care is not readily available. Moreover, should he require more intensive care, including a hospital stay, care according to American standards is just not available.

Only basic medical care and medicines are available in Syria, and many Syrian doctors and hospitals expect cash payment prior to providing services—since my income would be quite minimal, I would not have any money to pay for such medical services;

Medications available in Syria generally are brought from neighboring countries and sold in the black market—as medications manufactured in Syria cannot be trusted;

A number of diseases, many contagious and not typically encountered in the U.S., are endemic in Syria and each presents severe dangers to my young son. Should he

become afflicted with a serious illness or disease, I would not be able to afford to pay for any treatment, since there is no health insurance in Syria.

Healthcare provided to young son in Syria is quite limited and very poor compared to U.S. standards. Prevention and primary care programs have become de-emphasized as public expenditure on the health system has continued to fall. As a result, life expectancy is lower than in Western countries. Moreover, malnutrition has become increasingly common as the Syrian economy has continued to falter.

The condition of hospitals and medical facilities is poor, with unsanitary conditions and lack of proper medical equipment the norm. Moreover, there is only one hospital bed per 832 Syrians, which puts Syria on par with an underdeveloped country....

That there is no guarantee that if I return to Syria to serve out the two-year requirement, that I would ever be able to come back to the United States, as emigration is tightly controlled by the Syrian government (and I would need to obtain a visitor or employment based visa at the US Embassy in Damascus—which is increasingly difficult to do)—hence my young son could possibly be forced to live in Syria....

Affidavit of [REDACTED], dated July 9, 2007.

Counsel has provided numerous articles about country conditions and anti-American sentiment in Syria to corroborate the above statements. Counsel has additionally provided evidence of the applicant's military obligations upon his return to Syria. Moreover, an updated Travel Warning was issued on April 15, 2008 with respect to Syria. As stated by the Bureau of Consular Affairs, U.S. Department of State,

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-Syria, Bureau of Consular Affairs, U.S. Department of State, dated April 15, 2008.

Based on the documented social, economic and political turmoil in Syria, strong anti-American sentiment and the U.S. Department of State's recommendation that U.S. citizens avoid travel to Syria, the applicant's child's unfamiliarity with the language and customs, the uncertainty that the applicant's child will be able to return to the United States after the applicant's two-year foreign residency requirement is completed and the applicant's requirement to serve in the Syrian military for an extended period, which would lead to a long-term separation between a father and his son, the inherent financial hardship that the child would experience due to his father's minimal income during his military service and the risk of harm or death to the applicant, the AAO concludes that the applicant's U.S. citizen child would experience exceptional emotional, psychological and financial hardship were he to accompany the applicant to Syria for a two-year period.

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

...Since my wife is on J2 visa, she would be required to depart the USA with me. As a result, our US citizen young son would be left by himself in the U.S. Due to his very young age, he certainly would not be able to care for himself, as he would have nowhere to live and no one to take care of him. The hardships that he would face would be extraordinary and unimaginable....

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. As such, the AAO concurs with counsel that the foreign-residency requirement that both the applicant and his spouse must comply with would leave their young child in the United States

without his parents. This situation would clearly constitute exceptional hardship to the applicant's child if he remained in the United States.

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.