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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAY 23 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:

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 Russia who obtained J-1 nonimmigrant exchange status in August 2001. She is 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) based on U.S. Government financing. The applicant presently seeks a waiver of her two-year foreign residence requirement, based on the claim that her U.S. citizen children, born in July 2005 and May 2007, would suffer exceptional hardship if they moved to Russia temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled her two-year foreign residence requirement in Russia.

The director determined that the applicant failed to establish that her U.S. citizen children would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Russia. *Director's Decision*, dated October 9, 2007. The application was denied accordingly.

In support of the appeal, the applicant submitted Form I-290B, Notice of Appeal or Motion and a letter with referenced attachments, dated November 8, 2007. In addition, on March 17, 2008 and on April 21, 2008, the AAO received addenda and referenced exhibits from the applicant documenting her daughter's recently diagnosed medical condition, namely asthma. 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 physically present in the country of his nationality or his last residence for an aggregate of at 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(I): 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 record contains references to the hardship that the applicant's spouse would suffer were the applicant's waiver request denied. The record indicates that the applicant's spouse is an H-1B nonimmigrant status holder. As such, he is not a qualifying relative for purposes of section 212(e) of the Act, which provides that a waiver is applicable solely where the applicant establishes exceptional hardship to his or her citizen or lawfully resident spouse or child. In the present case, the applicant's U.S. citizen children are the only qualifying relatives, and hardship to the applicant and/or her spouse cannot be considered, except as it may affect the applicant's children.

The first step required to obtain a waiver is to establish that the applicant's U.S. citizen children would experience exceptional hardship if they resided in Russia for two years with the applicant. To support this contention, the applicant states the following:

I won't be able to obtain a high salary in Russia...because my graduate school Diploma only gives me the right to teach in colleges and universities (I do not have other professional skills besides the skills to educate students), and jobs in Russian academia are generally very low-paying. Thus, our anticipated household income in Russia would not exceed \$300 per month for our family of four.

Please note that Russia is generally considered among the countries dangerous for American citizens....

In addition, at the present time, anti-American sentiment in Russia runs really high.... Since the anti-Americanism became a part of official politics, Russian authorities are usually unwilling to collaborate with parents of U.S. born-children. This may affect various aspects of children's life, including accessibility of medical resources or child-care facilities for the U.S.-citizen children. For instance, should I stay in Russia to fulfill my requirement, I won't be able to place my U.S.-citizen children to the childcare, because such services are not available for children, who possess citizenship other than Russian....

Being unable to place my children to the day-care in Russia, I won't be able to get a full-time job and earn money to support my children. Thus, my financial resources for our family will be strictly limited....

Modern Russia is definitely not a safe and secure place to raise children.... High risk of accident, poor ecology, and possible malnutrition do not complete the list of problems I am concerned about. Should I bring my toddlers to Russia, we will have to face enormous challenges facing accommodation adequate for my U.S.-citizen children's needs. I do not own real estate in my home country, so I will have to move in with my parents and my brother to their two-bedroom apartment. The apartment is very small, and it will be extremely difficult to accommodate four adults and two young children in such a tight space.... [M]y children will be deprived of many modern conveniences.... For instance, due to financial difficulties

Russian local authorities still have to cut off the hot water in the residential apartments during the summer, which mean that kids will have to take cold showers....

Since children often require medical care on emergency basis, I am concerned about the quality of medical care in Russia.... Under these conditions, I won't be able to keep my children's immunization record updated, and also won't be able to rely on Russian health care system....

Statement of Reason of [REDACTED]

In an addendum provided by the applicant, she states as follows:

On February 8, 2008, my eldest daughter [REDACTED], was taken to the doctor's office in a critical condition having trouble breezing [sic]. Her pediatrician, [REDACTED] diagnosed an asthma attack....

...Russia has one of the highest asthma mortality rates in the world.... Due to drug shortage and poor state of public healthcare, less than 50% of people with asthma can have an access to medication and life supporting equipment in Russia. It is also well known that one of the major risk-factors with asthma sufferers is second-hand smoking. Russia is one of the few worlds' countries with open-smoking policy. Smoking is allowed in all public places, including public transportations, cafes and restaurants, even hospitals.... According to American Lung Association, an estimated 400,000 to one million asthmatic children have their condition worsened by exposure to secondhand smoke....

Should I take my daughter to Russian with me, she will definitely suffer from many environmental factors and won't be able to receive adequate medical care. Therefore, she will not only face the situation of extreme hardship, but may also be placed into life-threatening conditions....

Addendum Letter from [REDACTED], received March 17, 2008.

A letter is provided by [REDACTED] that further elaborates on the state of health care in Russia. As [REDACTED] attests:

I am a native of Russia and have a two-and-half year old daughter, who is born American citizen. Last summer I took my daughter to her first trip to Moscow, Russia to visit our relatives. During our visit my child became critically ill. She had such a high fever that she was almost unconscious, when we took her to the nearest hospital. However, people at the hospital refused to accept us (regardless the terms of our travel insurance), because my daughter was American citizen and did not have a permanent registration in Russia....

They suggested that we go to the only medical facility in the whole city of Moscow that was authorized to treat patients without permanent registration. That particular unit was at least three hours drive from the place we resided at that time. I decided to call emergency ambulance, but the operator asked about registration and where we were visited from. After the operator found out that my child had no other documents but American passport, she refused to register my call. She agreed to send the mobile ambulance only when I promised to pay the doctor cash upfront. When the doctor arrived, he was unable to diagnose the disease, and could only suggest that my daughter contracted some sort of viral infection. The doctor was also not trained to perform any tests and confessed that he did not have any experience with pediatric cases. He prescribed several medications in hope that one of them might target the particular virus my daughter had. The local pharmacy did not carry any of the drugs prescribed, and my relatives had to use their personal connections to have those prescriptions filled. Luckily, one of those drugs worked and my daughter recovered, but at that point I considered emergency departure to the United States to get professional medical help their [sic]....

...From my personal experience I would warn anybody with American-born children against travel to Russia....

Letter from [REDACTED] dated November 1, 2007.

The U.S. Department of State, in its Country Specific Information-Russian Federation, states the following regarding Russia's problematic country conditions:

Due to continued civil and political unrest throughout much of the Caucasus region, the Department of State continues to warn U.S. citizens against travel to Chechnya and all areas that border it: North Ossetia, Ingushetia, Dagestan, Stavropol, Karachayevo-Cherkessiya, and Kabardino-Balkariya. The U.S. Government's ability to assist Americans who travel to the northern Caucasus is extremely limited. Throughout the region, local criminal gangs have kidnapped foreigners, including Americans, for ransom. U.S. citizens have disappeared in Chechnya and remain missing. Close contacts with the local population do not guarantee safety. There have been several kidnappings of foreigners and Russians working for media and non-governmental organizations in the region. Due to the ongoing security concerns, U.S. Government travel to the area is very limited. American citizens residing in these areas should depart immediately as the safety of Americans and other foreigners cannot be effectively guaranteed.

Acts of terrorism, including bombings and hostage taking, have occurred in Russia over the last several years. Bombings have occurred at Russian government buildings, hotels, tourist sites, markets, entertainment venues,

schools, residential complexes, and on public transportation including subways, buses, trains, and scheduled commercial flights. Hostage-taking incidents have included a raid on a school that resulted in horrific losses of life of children, teachers, and parents.

There is no current indication that American institutions or citizens are targets, but there is a general risk of American citizens being victims of indiscriminate terrorist attacks. American citizens in Russia should be aware of their personal surroundings and follow good security practices. Americans are urged to remain vigilant and exercise good judgment and discretion when using any form of public transportation. When traveling, Americans may wish to provide a friend, family member, or coworker a copy of their itinerary. Americans should avoid large crowds and public gatherings that lack enhanced security measures. Travelers should also exercise a high degree of caution and remain alert when patronizing restaurants, casinos, nightclubs, bars, theaters, etc., especially during peak hours of business.

American citizens living in Russia or traveling there for even a few days are strongly urged to register with the U.S. Embassy or nearest Consulate General. Registration will allow the embassy to provide direct information on the security situation as necessary. Registration can be done on-line and can be done in advance of travel.

Medical care in most localities is below Western standards; shortages of medical supplies, differing practice standards and the lack of comprehensive primary care all combine to make the medical system difficult to negotiate as well as suspect. The few facilities in Moscow and St. Petersburg that approach acceptable standards do not necessarily accept all cases (i.e., they may not be licensed to treat trauma, infectious disease or maternity cases). Access to these facilities usually requires cash or credit card payment at Western rates at the time of service.

Elderly travelers and those with existing health problems may be at particular risk. Elective surgeries requiring blood transfusions and non-essential blood transfusions are not recommended, due to uncertainties surrounding the local blood supply. Most hospitals and clinics in major urban areas have adopted the use of disposable IV supplies, syringes and needles as standard practice; however, travelers to remote areas might consider bringing a supply of sterile, disposable syringes and corresponding IV supplies for eventualities. Travelers should refrain from visiting tattoo parlors or piercing services due to the risk of infection.

Outbreaks of diphtheria and Hepatitis A have been reported throughout the country, even in large cities such as Moscow and St. Petersburg. The U.S. Centers for Disease Control and Prevention recommend up-to-date tetanus and diphtheria immunizations before traveling to Russia and neighboring countries.

Typhoid can be a concern for those who plan to travel extensively in the region. Rarely, cases of cholera have also been reported throughout the area. Drinking bottled water can reduce the risk of exposure to infectious and noxious agents. Tap water in Russia, outside of Moscow, is generally considered unsafe to drink. Travelers are strongly urged to use bottled water for drinking and food preparation. Tuberculosis is an increasingly serious health concern in Russia. For further information, please consult the CDC's Travel Notice on TB at <http://wwwn.cdc.gov/travel/yellowBookCh4-TB.aspx>.

Rates of HIV infection have risen markedly in recent years. While most prevalent among intravenous drug users, prostitutes, and their clients, the HIV/AIDS rate in the general population is increasing. Reported cases of syphilis are much higher than in the United States, and some sources suggest that gonorrhea and chlamydia are also more prevalent than in Western Europe or the United States. Travelers should be aware of the related health and legal risks.

Country Specific Information-Russia, U.S. Department of State, dated December 26, 2007.

Based on the documentation provided, the AAO finds that the hardship the applicant's children would encounter were they to relocate to Russia for a two-year period goes significantly beyond that normally suffered upon the temporary relocation of families based on a two-year home residency requirement. The record indicates that the applicant's daughter, [REDACTED], suffers from a medical condition that will be exasperated were she to reside in Russia, due to the country's environmental conditions and substandard healthcare. The record also establishes the turmoil and safety concerns with respect to being a U.S. citizen residing in Russia. Moreover, the record establishes that the applicant's children would suffer financial hardship due to the troublesome economic conditions in Russia. As such, based on a totality of the circumstances, the AAO finds that the applicant's children would encounter exceptional hardship were they to relocate to Russia.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen children would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in Russia. To support this contention, the applicant states the following:

I consider the potential psychological harm to my U.S. citizen children to be one of the most important among other factors, my departure would cause... Please note, that if my children remain in the United States during the period I must spend in my home country, this will constitute not a mere separation, but a situation, dangerous for my eldest child's mental health.

My eldest daughter, [REDACTED], suffers from the psychological condition known as Separation Anxiety Disorder (SAD). SAD is usually described as excessive fear (phobia) about being apart from people to whom the individual has a strong emotional attachment, especially, his or her mother.

My daughter, [REDACTED] has been diagnosed with Separation Anxiety Disorder by her pediatrician, [REDACTED] and referred to the children's psychologist for the detailed evaluation. [REDACTED] is absolutely positive, that [REDACTED] condition will deteriorate upon my departure....

[REDACTED], a licensed psychologist and Director of Positive Outcomes Psychological Services at Athens, Ga, has evaluated my daughter's psychological condition. [REDACTED] also thinks that extreme hardship for my U.S. citizen child will result if she remains in the U.S. while I move to Russia....

Currently my daughter, [REDACTED], is undergoing a psychological therapy....

[REDACTED] therapist, [REDACTED] also considers the possible [sic] my daughter' [sic] separation with me to be an extremely stressful situation, which may trigger complications in her disorder....

Supra at 5-6.

[REDACTED] corroborates the concerns outlined by the applicant with respect to the emotional and psychological hardship that the applicant's child would experience were the applicant to reside abroad for a two-year period. As [REDACTED] states:

I have been [REDACTED]'s [the applicant's child's] pediatrician since January 2006. Since her first visit to my office [REDACTED] displayed high level of anxiety in view of possibility of being separated from her mother even for the very brief period of time. Separation anxiety is a normal developmental stage for very young children, however, [REDACTED] condition did not go away as she grew, but became more severe.

In April 2007, I suspected [REDACTED] to have a Separation Anxiety Disorder and referred her to the licensed psychologist...who confirmed my diagnosis I believe that [REDACTED] separation with her mother for the extended period of time will impose a serious risk for her emotional health....

Letter from

Athens Pediatrics at Resource Medical, dated June 12, 2007

further elaborates:

I am a licensed clinical psychologist in the state of Georgia, and specialize in the treatment of children. I've seen [REDACTED]'s [the applicant's] daughter, [REDACTED], in my office on numerous occasions. I diagnosed this child with Separation Anxiety Disorder, the psychological condition that does not

allow [REDACTED] to be separated from her mother for any extended period of time....

I would like to emphasize once again that for my patient...who has been diagnosed with Separation Anxiety Disorder, separation from her mother will result in a severe emotional stress. The likely result of this stress includes but is not limited to difficulties in creating bonds with other caregivers, lower self-esteem and lower confidence level later in the life, behavioral and academic difficulties, and other psychological issues....

...With the severity of [REDACTED]'s Separation Anxiety Disorder, the consequences of the separation will be way beyond what constitute an acceptable degree of emotional anguish....

Letter from [REDACTED] Ph.D., Clinical Psychologist, dated November 1, 2007.

Based on the documentation provides, the AAO concurs with the applicant that the emotional and psychological ramifications of separating young children from their mother for a two-year period would cause the children, especially her eldest child due to her documented mental health diagnosis of Separation Anxiety Disorder, exceptional hardship.

The AAO finds that the applicant has established that her children would experience exceptional hardship were they to relocate to Russia and in the alternative, were they to remain in the United States without the applicant, for the requisite two-year period. 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 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.

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.