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U.S. Citizenship  
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

OCT 03 2008

IN RE:



APPLICATION:

Application for Waiver of of the Foreign Residence Requirement under Section 212(e)  
of the Immigration and Nationality Act; 8 U.S.C. § 1182(e).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Turkey who entered the United States in J-1 nonimmigrant exchange status on June 28, 1998 to participate in a program financed by the exchange visitor's government. 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).<sup>1</sup> The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen children, born in August 1999 and June 2007, would suffer exceptional hardship if they moved to Turkey temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Turkey.

The director determined that the applicant failed to establish that his U.S. citizen children would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Turkey. *Director's Decision*, dated April 9, 2008. The application was denied accordingly.

In support of the appeal, the applicant submits a statement, dated May 1, 2008, with referenced attachments. 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

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<sup>1</sup> 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 U.S. citizen children would experience exceptional hardship if they resided in Turkey for two years with the applicant. To support this contention, the applicant states the following:

...Going to Turkey...will result my transfer from the airport to military for my military service which is 15 months. In Turkey, military service is obligatory for men and during this service there is only 30 days for family visit, therefore one is physically separated from the family for 14 months. I also indicated that since military is an obligatory service, there is no payment during this service. Military only provides shelter and food and other basic needs for the person in military service.... My joining in military for 15 months upon our arrival in Turkey will result in financial difficulty for my children since I will not be paid during this service and since we don’t own a house in Turkey there would be no place to leave my children. Current Turkish military is actively launching military attacks in northern Iraq and this makes me worried for the future of my children because of the possibility that I might be assigned to join these operations.

Because there is a ‘pay for your military service’ program in Turkey and it would potentially eliminate the above problem if I could enter this program because I would try to get any kind of job to support my children, I wanted to let you know that I am not qualified for this program because of my transfer to F2 visa, which interrupted my employment and disqualified me for the program.... My visa status in the U.S.A. was changed to F2 for a while and that is the reason I am not eligible for this service because I don’t meet the requirement of holding a job continuously for the last three years. Because I could not work under F2 visa there was an interruption in my employment....

In the explanations for the decision, it was also indicated that my wife would easily find a good paying job in Turkey to support our children. This is very unlikely for two reasons. First, Turkish Supreme Court is currently allied with an antidemocratic elite group and is about to close down the current governing party, AKP which is representing 47% of the votes when elected and 70% of the votes in the last presidential election. This already jeopardized the stability of the government and the economy in Turkey and it is difficult to get a job. If AKP is shot down the other parties even with conditions will not be able to form a government because they don’t have enough chairs in the parliament. Therefore, this will interrupt democracy which is already in its infancy in Turkey....

Secondly, the very reason the Supreme Court wants to remove AKP is because AKP attempted to remove a ban that does not allow women wearing headscarves to get education even in universities. This ban has been always there but lately it is enforced severely. Not only employees or students but also students' parents are not allowed in campuses if they wear headscarf.... Women with headscarf or with a history of wearing headscarf can not get jobs. All universities and hospitals, which are the only institutions both my wife and I could get jobs due to our professions, are state institutions and even private ones, which are not many in Turkey, are bound to apply these rules.... My wife worked at a university in Turkey between 1993 and 1998 wearing headscarf. This ban has been severely enforced lately and my wife with a history of wearing headscarf is unlikely to be hired easily.....

...My wife and our children will have to stay without income with relatives who are located in the east part of Turkey where bombing of public places is almost a part of daily life.... Our children are American citizens and are under 10 years of age. They are not over a certain age to make their own decision about where to live and I am strongly worried to leave them unprotected in a place possibly in someone else's house alone with their mother....

*Statement of Basis for My Appeal, dated May 1, 2008.*

The applicant has provided documentation to corroborate the above statements with respect to his military obligation, his spouse's inability to obtain employment in Turkey due to the headscarf ban, and the problematic country conditions in Turkey. In addition, as stated by the Bureau of Consular Affairs, U.S. Department of State,

Terrorist bombings over the past five years – some causing significant numbers of casualties – have struck religious, government, government-owned, political, tourist and business targets in a number of locations in Turkey. A variety of leftist or Islamic terrorist groups have targeted U.S. and Western interests as well. Terrorists claiming association with al-Qa'ida were responsible for suicide bombings in Istanbul in 2003 that targeted Western interests. In August 2005, Turkish police uncovered a planned terrorist attack by a transnational group targeting maritime interests in Turkey. The possibility of terrorist attacks, both transnational and indigenous, remains high.

The Kurdistan Worker's Party (PKK, also known as Kongra Gel) is one of the most active terrorist organizations in Turkey. Over the last few decades, the PKK has been responsible for the deaths of more than 30,000 Turkish citizens. This indigenous terrorist group continues to target Turkish officials and

various civilian facilities. The following paragraphs describe the extent of terrorist activity in major cities and regions in Turkey:

Ankara: In May 2007, an explosive device was detonated by a suicide bomber in the Ulus district of Ankara during rush hour, resulting in six deaths and injuring more than 100. While there was no claim made by the PKK, the material used in the device was similar to that frequently used by the group. In September 2007, 600 kilograms of explosives were found in a minivan parked in a multi-story car park in the central Sıhhiye area of Ankara. Investigations revealed a suspect with ties to the PKK.

Istanbul: In November 2003, al-Qa'ida-associated suicide bombers attacked the British Consulate, an HSBC Bank, and two synagogues, killing dozens and wounding hundreds of people. These incidents represent a significant change from prior attacks in Turkey and showed an increased willingness on the part of terrorists to attack Western targets. On July 9, 2008, a terrorist attack on the Turkish police guarding the U.S. Consulate General in Istanbul resulted in three police officer deaths and wounding two other police personnel. At this time, responsibility for the attack has not been claimed by or assigned to a specific terrorist group. In April 2007, Turkish police captured a PKK terrorist in one of Istanbul's major tourist centers, Taksim Square. The female terrorist was intercepted carrying a bomb made of five kilograms of A-4 explosive; the target was a large gathering celebrating the founding of the Turkish police. In December 2007, a suspected male PKK member carrying three kilograms of A-4 explosive material in a backpack was arrested by Turkish National Police in Istanbul's Mecidiyekoy Square; the intended target was the Mecidiyekoy subway station.

In Istanbul, small-scale bombings and violent demonstrations, and more recently vehicle arsons, have occurred regularly since 2006. Most, but not all, of these incidents have happened in neighborhoods not generally frequented by tourists. PKK supporters on a number of occasions have set public buses on fire after ordering passengers to disembark. In April 2006, an attack of this type resulted in three deaths and at least one severe wounding. Thus far, no attacks on buses have taken place in tourist areas of the city.

Mediterranean/Aegean Regions: The Kurdistan Liberation Falcons (TAK, also known as the Kurdistan Freedom Hawks), which was designated a "Specially Designated Global Terrorist" organization by the Department of State in January 2008 and is ostensibly aligned with the PKK, has warned tourists not to visit Turkey. Consistent with its threats, this group claimed responsibility for a number of bombings in tourist areas in the Mediterranean and Aegean coastal

resort areas (as well as in Istanbul). In July 2005, TAK claimed responsibility for a bomb that ripped through a minibus in the holiday resort town of Kuşadası, killing five persons, including a British tourist and an Irish tourist. In June 2006, the group also was responsible for an explosion that killed three European tourists in Manavgat, a town in Antalya Province, as well as other attacks in the Antalya and Muğla Provinces. In August 2006, ten Britons and six Turks were injured when their minibus was blown up in Marmaris, and a bomb killed three and injured 87 in a blast at a shopping area in the city of Antalya.

Eastern and Southeastern Provinces (including Adana): The PKK retains a presence in certain parts of southeastern Turkey, and regularly carries out attacks focused primarily on security personnel; occasionally, however, attacks injure or kill civilians. Travel is difficult and should be considered dangerous in some portions of this region. Americans traveling in southeastern Turkey, as well as to Mt. Ararat in the Agri, northeast, should exercise extreme caution. On July 3, 2008, three German tourists were kidnapped by armed PKK militants while camped on Mt. Ararat with their 13-member climbing team. This kidnapping highlights the risks to traveling in this area and in Turkey's southeast.

Roadside explosions caused by remote-controlled land mines or other improvised explosive devices in the Batman, Şırnak, Hakkâri, Siirt, Mardin, Diyarbakir and Tunceli provinces occur regularly. Sound bombs are a frequent event throughout the region. There have also been a number of PKK raids on Jandarma posts and ambushes of Turkish security force vehicle patrols in many of Turkey's rural southeastern areas. In 2005, the PKK attacked two trains and kidnapped two Turkish government employees in the region. In August 2006, two bombs exploded in Adana, injuring four people. In September 2006, a bomb detonated in the city of Diyarbakir, killing ten and injuring 15 Turkish nationals. In January 2008, a PKK remote controlled car bomb killed seven people and injured 66 when it exploded on a street in downtown Diyarbakir.

Terrorist activity aside, the southeast area has also had a history of civil unrest of which travelers should be aware. Regional civil unrest that began in late March 2006 prompted clashes involving Turkish security forces and protestors, and left approximately a dozen people killed and several hundred wounded.

*Country Specific Information-Turkey, Bureau of Consular Affairs, U.S. Department of State, dated July 18, 2008.*

Moreover, in the Country Report on Human Rights Practices-Turkey, the following is stated, in pertinent part, regarding the head scarf ban referenced by the applicant, and its financial ramifications:

Authorities continued to enforce a long-term ban on the wearing of headscarves at universities and by civil servants in public buildings. Women who wore headscarves and persons who actively showed support for those who defied the ban were disciplined or lost their jobs in the public sector. Students who wore head coverings were not permitted to register for classes, although some faculty members permitted students to wear head coverings in class. Some wore wigs instead.

In 2005 the ECHR Grand Chamber upheld a 2004 ECHR ruling that the ban on Islamic headscarves in the country's universities was lawful.

In February 2006 the Council of State ruled in favor of a decision by education authorities to revoke the promotion of an Ankara teacher to a nursery school principal position on the grounds that the teacher regularly wore an Islamic headscarf outside of school. Numerous journalists and religious rights advocates asserted that the court's decision effectively expanded the headscarf ban into the private sphere. The court, however, maintained that the teacher had violated the principle of secularism in education by wearing the headscarf while traveling to and from school.

*Country Reports on Human Rights Practices-Turkey, Released by the Bureau of Democracy, Human Rights, and Labor, dated March 11, 2008.*

Based on the documented social, economic, religious and political turmoil in Turkey, the applicant's requirement to serve in the Turkish military for an extended period, which would lead to a long-term separation between a father and his children, the inherent financial hardship that the children would experience due to their father's military service and their mother's inability to work due to the head scarf ban, and the risk of harm or death to the applicant, the AAO concludes that the applicant's U.S. citizen children would experience exceptional emotional, psychological and financial hardship were they to accompany the applicant to Turkey for a two-year period.

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 Turkey. The applicant asserts that it would be impossible for the applicant's children to remain in the United States for two years while the applicant returned to Turkey because no one would be available to care for his child. As stated by the applicant,

...My J1-visa extension was expiring last June (2006) and to stay with my family in the states, my visa status was changed to F2 as a dependent to my wife who is initially came to U.S. as my dependent with a J2 via and is also subjected to a 2 year home stay rule....

*Statement of Reason, dated July 10, 2007.*

As the record indicates, both the applicant and his wife are subject to the two-year home residency requirement under section 212(e) of the Act. As such, the AAO concludes that the foreign-residency requirement that both the applicant and his spouse must comply with would leave their young U.S. citizen children in the United States without their parents. This situation would clearly constitute exceptional hardship to the applicant's children if they remained in the United States.

The record, reviewed in its entirety, supports a finding that the applicant's U.S. citizen children 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.