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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

[REDACTED]

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FILE [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 24 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:

[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, born in Jerusalem to Palestinian parents, is a national of the West Bank (now part of the Occupied Territories) who obtained J-1 nonimmigrant exchange status on July 15, 1996 to participate in a program funded by the U.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). The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen spouse, and his U.S. citizen child born in August 2007, would suffer exceptional hardship if they moved to the West Bank temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled the two-year foreign residence requirement in the West Bank.

The director determined that the applicant failed to establish that his U.S. citizen spouse and/or child would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in the West Bank. *Director's Decision*, dated March 5, 2008. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a letter, dated April 2, 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 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 spouse and/or child would experience exceptional hardship if they resided in the West Bank for two years with the applicant. To support this contention, the applicant states the following:

The US State Department has a travel warning for Americans wishing to travel to the Palestinian Territories. It warns of violence in the area, including conditions of lawlessness, intra-Palestinian violence, violent demonstrations, armed conflicts, and kidnappings of foreigners. In addition, it warns that the Israel Defense Forces (IDF) carry out operations in the West Bank, including airborne attacks and ground incursions which have led to the deaths and injuries of bystanders.... According to a 2007 World Health Organization (WHO) report, in 2006 nearly a 5th of Palestinian deaths from violence were children and over 3 times as many children were injured that year (472) than in 2005. All of this poses a danger to the safety and security of the US spouse and child.

Israel controls the borders of the Occupied Palestinian Territories. Since September 2000—after the second Palestinian uprising—Israeli authorities suspended all family unification procedures and stopped giving residence permits to spouses from other countries who were married to Palestinians living in the Palestinian Territories. By 2006 the Palestinian Authority had received more than 120,000 requests for family unification submitted by West Bank and Gaza residents that Israel refused to process. Foreign spouses from the US and Europe usually were able to live with their Palestinian spouses by leaving the Palestinian Territories and Israel and re-entering on a visitor's visa every 3 months.... However, Israeli authorities extended the restrictions on entry to the Palestinian Territories for these foreign spouses after Hamas won a majority of seats in the Palestinian elections in 2006. These restrictions also often prevent reentry of foreign nationals working in education and economic development in the Palestinian Territories. After protests against the policy, the Israeli Civil Administration since January 2007 has allowed 200 short extensions of visas to those who were previously refused. However, most of those who have been denied entry continue to be denied entry. If the spouse (from the US or Europe) leaves Israel/Palestinian Territories, there is no guarantee she will be allowed back in....

This constitutes a forced separation which violates international human rights law. Even if she [the applicant's spouse] is successful in obtaining a visitor's visa every 3 months there are exceptional obstacles for her. Leaving every 3 months by airplane to the US or Europe is a financial burden.... In addition, if she leaves through Jordan she would endure a physical burden, not only by having to cross the broken-up Palestinian Territories by car but also the Jordanian border by bus and on foot. Often, this is half a day's trip. Most foreign spouses married to Palestinians living in the Palestinian Territories have a hard choice: either separate from the family, risk deportation by overstaying an expired visitor's visa or relocate with the whole family to the spouse's home country. However, in the applicant's case, he is not able to relocate to the US while completing the J-1 home residency requirement....

Restrictions on movement affect access to medical treatment. Human rights organizations have received hundreds of complaints of ambulances transporting sick and wounded, some in emergency situations, being delayed or prevented from crossing checkpoints. This will limit the ability of the US spouse and child to receive emergency medical treatment in Israel, where healthcare standards are comparable to the United States....

Although Israel's healthcare is comparable to US standards, there is no guarantee US spouse and child will be able to access it. In addition, Israel has universal, and therefore affordable, healthcare for all Israeli residents. Because US spouse and child won't have resident status in Israel, any medical treatments there will have to be paid out of pocket and will be very expensive....

In June 2000, US spouse was diagnosed with Interstitial Cystitis (IC), a chronic, inflammatory bladder disease characterized by urinary frequency, urgency and pelvic pain. It can be a debilitating disease and there is no cure. Many with IC also suffer from additional problems such as allergies, irritable bowel syndrome, and menstrual pain.... She has successfully managed her symptoms for over 6 years with extreme diet changes, acupuncture, herbal medicine, pelvic floor exercises, and chiropractic treatments....

If US spouse lives with applicant in the Palestinian Territories, she will have access to non-traditional treatments in Israel to help her continue to manage her IC symptoms. In the Palestinian Territories there are no non-traditional treatments except for physical therapy. Israel is also more likely to have available prescription drugs for IC should her condition deteriorate to need them. Because of her US passport she will be able to enter Israel; however, restrictions on movement in the Palestinian Territories such as long waits at checkpoints and closures could present US spouse from accessing the treatments she needs to maintain her health. Even if US spouse is able to cross into Israel regularly for her treatments, she will be risking each time not being able to get back into the West Bank and will be regularly exposed to dangers inside Israel such as terrorist attacks....

The applicant's US spouse does not speak Arabic, which would affect her ability to live, work, and travel in the West Bank....

A wealth of research has linked stress and stressful events to greater pain and urinary urgency in patients with IC....

[S]tress from living in a war-torn region...could also increase her IC symptoms.

Statement of Exceptional Hardship from [REDACTED], dated July 25, 2007.

The applicant's U.S. citizen spouse further references the hardships she and her child would face were they to accompany the applicant abroad for a two-year period. As she asserts:

It will cause exceptional hardship to my family if we accompany my husband Osama [the applicant] to the Occupied Palestinian Territories while he fulfills the goals/requirements of his Fulbright program. During the last 10 years since I have known [REDACTED], I have visited his family in the Palestinian Territories two times, once in 2003 and again in 2005. While I loved meeting his family and community there, I also witnessed the great difficulties ordinary Palestinians endure there. I walked through long lines at checkpoints, heard gunshots in the middle of the night, and saw buildings, roads and homes damaged by military tanks and planes. I also was in Israel picking up my parents at the Tel Aviv airport a week before a suicide bombing in Israel. While the two trips were a good educational and cultural experience for me as an American, they also made me fear for the safety and security of myself and my family....

[T]he continuing violence and outbreak of civil strife there has caused me newer and higher levels of concern for the safety of my family. These concerns include not only violence and instability in the Palestinian Territories, but also restrictions on movement...impeded access to emergency medical care, rising unemployment and poverty, and lack of adequate healthcare for our child and myself.... In addition, a great concern is that there will be a forced separation of me and our child from [REDACTED]. If I were to live in the Palestinian Territories with [REDACTED] I would have to make a difficult and costly trips and leave Israel/Palestinian Territories every 3 months to reapply for a visitor's visa with no guarantee...that I would be allowed back in to the Palestinian Territories each time....

Statement from [REDACTED] dated July 25, 2007.

In a Travel Warning issued by the U.S. Department of State in September 2008, the following was stated regarding the West Bank, in pertinent part:

This Travel Warning updates information on the general security environment in Israel, the West Bank, and the Gaza Strip, and reminds American citizens of threats to themselves and to U.S. interests in those locations. The Department of State urges U.S. citizens to remain mindful of security factors when planning travel to Israel. In addition, the Department of State urges U.S. citizens to defer travel to the West Bank and to avoid all travel to the Gaza Strip. This warning supersedes the Travel Warning issued March 19, 2008.

The security environment in the West Bank remains volatile. Violent demonstrations, kidnappings and shootings are unpredictable and can occur without warning. The Department of State urges Americans to defer travel to the West Bank at this time.

The IDF continues to carry out security operations in the West Bank, including nighttime raids to arrest terrorist suspects that sometimes result in gun battles. Israeli security operations can occur at any time, including frequent raids to arrest terrorist suspects that result in shootings, demonstrations and often violent conflict. This heightens the risk of Americans being caught in the middle of potentially dangerous situations. Some Americans and Europeans involved in

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

All those who pass through the West Bank should exercise particular care when approaching and transiting Israeli military checkpoints. Travelers should be aware that they might encounter delays and difficulties, and might even be denied passage through a checkpoint.

American citizens should be aware that, as a consequence of the current limitations on official travel to the West Bank, the ability of consular staff to offer timely assistance to U.S. citizens there is limited.

All American U.S. Government personnel and their dependents are prohibited from traveling to any cities, towns or settlements in the West Bank, except when they are on mission-essential business or are traveling for other mission-approved purposes.

Israeli authorities remain concerned about the continuing threat of terrorist attacks. In September 2008, a vehicle plowed into a group of Israeli soldiers on a traffic island near a Jerusalem square, injuring more than a dozen. Two fatal bulldozer attacks on civilians in July 2008 and a March 2008 shooting, all in Jerusalem, and a February 2008 bombing in Dimona are reminders of the precarious security environment. The threat of such attacks is on-going. American citizens are cautioned that a greater danger may exist in the vicinity of restaurants, businesses and other places associated with U.S. interests and/or located near U.S. official buildings, such as the U.S. Embassy in Tel Aviv and the U.S. Consulate General in Jerusalem. Rocket fire from Lebanon into Israel, except for one recent incident, has ceased since the end of military hostilities between Israel and Hizbollah forces in southern Lebanon in the summer of 2006. Although Israel denied any involvement, the killing of a Hizbollah leader in Syria on February 12, 2008, raises the possibility of Hizbollah attacks against Israel.

American citizens are urged to exercise a high degree of caution and common sense when patronizing restaurants, nightclubs, cafes, malls, places of worship, and theaters -- especially during peak hours. Large crowds and public gatherings have been targeted by terrorists in the past and should be avoided to the extent practicable. American citizens should take into consideration that public buses, trains, and their respective terminals are "off-limits" to U.S. Government personnel.

American citizens whom Israeli authorities determine to be of Arab origin are likely to face additional, often time-consuming, and probing questioning by immigration and border authorities, or may even be denied entry into Israel. If they are determined by Israeli authorities to have a claim to residency status in the West Bank or Gaza, or to have a claim to a Palestinian identification number, such American citizens may be required by the Government of Israel to use a Palestinian Authority travel document to transit Israel to enter the West Bank or Gaza. Such

a determination could be made for American citizens if they or their immediate family members were born in the West Bank or Gaza, currently reside there, or lived there for any appreciable amount of time.

American citizens who hold a Palestinian Authority ID, as well as persons judged by the Israeli authorities to have claim to a Palestinian Authority ID, will be considered subject to Israeli law and to regulations that Israel applies to residents of the West Bank and Gaza, regardless of the fact that they hold U.S. citizenship.

Travel Warning-Israel, the West Bank and Gaza, U.S. Department of State, Bureau of Consular Affairs, posted September 26, 2008.

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

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

If US spouse and child remain in the US while the applicant lives in the Palestinian Territories for two years, US spouse will experience exceptional stress from: prolonged separation from her husband and father of her child, concerns for her husband's safety and security, financial burdens of raising a child on a potentially single income and on her own, and inability to visit her husband due to violence and instability in the Palestinian Territories. This stress will most likely worsen US spouse's condition, which if not controlled well can affect every area of life. Although she has her condition currently controlled, she was unable to work the first 3 months after she was diagnosed with IC in 2000. IC is a condition that when more severe makes it difficult for some to work and make a living and some go on disability. The potential for her condition to digress and become debilitating again puts her financial livelihood and ability to care for her child at risk....

If US spouse and child remain in the US while applicant lives in the West Bank, they will experience financial burdens. US spouse currently makes \$40,600 a year and will be loosing her job at the end of December 2007 due to the ending of the grant her position is funded under at the University of Iowa. With the cost of daycare...cost of mortgage/rent, her graduate school loan payments, and her non-traditional healthcare expenses not covered by insurance, there will be

little money left for everyday costs even if she is able to find another position with equivalent pay. In addition, the family's savings will most likely be used by the applicant while living in the West Bank for 2 years. With rising unemployment in the Palestinian Territories, there is no guarantee he will be able to find a job....

If US spouse and child remain in the United States while applicant lives in the Palestinian Territories, the child will suffer from this separation from the father. Fathering and frequent contact with a father is important to a child's social development, including those who are infants and toddlers. The child would be separated from the father starting at 9 months of age, with little chance for visits until almost 3 years old.

Supra at 7-9.

The record indicates that the applicant has played an integral part in the applicant's spouse's emotional, physical and financial well-being, in light of her chronic medical condition. As such, due to the applicant's spouse's documented diagnosis of interstitial cystitis and the need for her continued supervision and treatment and the fears and anxieties experienced by the applicant's spouse with respect to her husband's anticipated return to the West Bank and the ramifications of stress on the applicant's spouse's medical condition, the AAO finds that the applicant's departure for a two-year period would cause the applicant's spouse exceptional hardship.¹

The AAO thus finds that the applicant has established that his U.S. citizen spouse would experience exceptional hardship were she to relocate to the West Bank 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 concludes that the evidence in the record establishes the hardship the applicant's spouse 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 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.

¹ As the AAO has determined that exceptional hardship exists with respect to the applicant's spouse were her husband to relocate to the West Bank for a two-year period while she remains in the United States, it is not necessary to evaluate whether the applicant's U.S. citizen child would experience exceptional hardship were he to remain in the United States while the applicant relocates abroad for a two-year period.



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.