

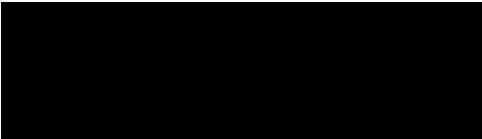
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FILE:



Office: CALIFORNIA SERVICE CENTER

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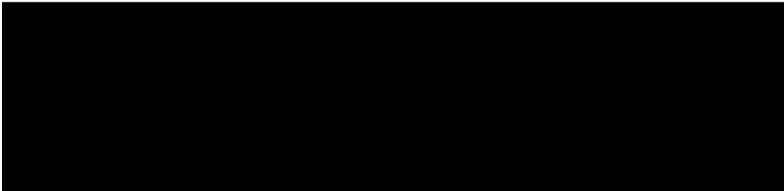
IN RE:



APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Pakistan who was admitted to the United States in June 1999 to participate in graduate medical training. She 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 her two-year foreign residence requirement, based on the claim that her U.S. spouse and child, born in August 2006, would suffer exceptional hardship if they moved to Pakistan 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 Pakistan.

The director determined that the applicant failed to establish that her U.S. citizen spouse and/or child would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Pakistan. *Director's Decision*, dated March 26, 2008. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated May 14, 2008; copies of two court decision relating to waivers under section 212(e) of the Act; an affidavit from the applicant's spouse, dated May 8, 2008; and a psychological evaluation relating to the applicant and her family, dated April 16, 2008. 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(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 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 Pakistan for two years with the applicant. To support this contention, the applicant summarizes the hardships her spouse and child would face in Pakistan:

...If we were to move to Pakistan as a family, for two years, we would have limited and few financial resources there. Physicians make an inadequate amount of money in Pakistan to support their families, and my husband's career opportunities would also be restricted in Pakistan. As a female associated with the US, I will face discrimination in hiring and in procuring jobs with decent salaries. We would likely live in poverty, which would create a hardship for both my husband and son. My U.S. citizen son would suffer exceptional hardship in Pakistan under a number of other circumstances as well. He would suffer hardship because of the health risk posed by the poor environmental conditions, the setback in his English language acquisition, the criminal violence in Pakistan, the anti-American sentiment, and the political and social instability of the country....

My husband...was born in Pakistan. While still a child, at age 9, he migrated to the United States.... Since then, they have been living in the US. The only language my husband speaks is English....

[the applicant's spouse] is a physician.... Since 2003, he has been engaged in private medical practice. It has taken him all this time to establish a reasonable practice... His leaving this practice will not only uproot him from this setting and let his efforts of four years go down the drain, but it will also bereave hundreds of poor, elderly patients from the doctor they trust and the one who has come to know of their ailments and idiosyncrasies....

If [redacted] were to try to find work in Pakistan, he would meet certain impossible obstacles. Primarily, Ansar does not speak the language spoken in Pakistan (Urdu). For this reason, he will not be able to communicate with potential patients, and employers will certainly not hire him....

Because my husband will not be able to work, I will be left to be the sole breadwinner, and my husband will then have to remain home with our son. While it is ideal that one parent be able to stay home with our son, our financial situation will make it far less than ideal. I will not make enough on my own to support our entire household....

The prevalent sexism in Pakistan will also serve as a detriment to my family's financial security in Pakistan.... It is the norm that men are the only bread-earners in the family.... Because this is a male dominated field and the prevailing view of women is that of a housewife, I would face systematic harassment.... As a female physician, in the sexual-discriminatory and violence-ridden environment of Pakistan, I shall face persistent harassment. This would inevitably have a deleterious

emotional effect on my son, because this would adversely affect my abilities as a parent and my abilities to obtain any job, much less a job that pays well enough to support us....

Pakistan has extraordinarily poor environmental conditions, which are rapidly deteriorating with the industrialization of the country. Since my son was born in the United States and has not spent significant time in Pakistan, he does not have any resistance to the diseases prevalent in Pakistan. He would most certainly be at great risk should he be forced to move to Pakistan, especially because he presently has medical conditions that will worsen should he move to Pakistan. Specifically, my son suffers from an eating disorder that has resulted in [redacted] [the applicant's child] being seriously underweight. Additionally, [redacted] suffers from eczema, which will most certainly worsen given the extreme pollution level in Pakistan....

If [redacted] were to become ill with one of the many rampant diseases in Pakistan, his life would be at risk due to the poor healthcare system. Pakistan's child health care services are not able to address the large number of children affected by contaminated water, food, and air.... My son falls into the age range of 0 to 5 years old that 70% of deaths were reported due to easily preventable ailments. I am very worried that my son will be easily susceptible to such diseases because he has not built up any immunity...and more so, I am worried he will not receive adequate health care....

[redacted] currently has frequent interaction with other children of his age. This is an important factor in his emotional development and will also help him acquire social skills. Moving to Pakistan would be a traumatic disruption to his life. [redacted] would miss out on various opportunities to socialize with children of his age in Pakistan due to the fact that there are no childcare centers in Pakistan. There is no equivalent to nursery, day-care and pre-kindergarten in Pakistan. He would be forced to stay at home and away from other children of his age until we return to the US after two years.

[redacted] will not be able to be a part of play groups with other children who stay home with their parents, for several reason. First, [redacted] will be at home with my husband, who only speaks English. No one will want to associate with my husband due to the high level of anti-American sentiment.... Additionally, most parents that stay home with children are women. Pakistan is very gender-segregated, and it would be considered improper for stay-at-home moms to have interaction with my husband as a stay-at-home dad.

The United States' involvement in the Middle East and South & Central Asia has inspired hatred against Americans amongst many people in the region, especially in Pakistan....

Additionally, members of terrorist groups...have infiltrated and spread throughout Pakistan. The flow of terrorists has increased since the U.S. invasion of Afghanistan, as members of al Qaeda and the Taliban have sought refuge in Pakistan.... The presence of these entities in Pakistan does not bode well for my U.S. citizen husband and child, and I have great concern that they should not be thrust into such an environment.

This anti-American sentiment manifests itself in violent attacks against American interests and U.S. citizens in Pakistan....

The people in my native area of Pakistan are also aware that I have been living in the United States for a number of years now, and therefore, to the people in my native area, I am not considered Pakistani anymore. Based on this fact alone, we will be treated as outsiders, and most notably, we will likely be the targets of extremist terrorist groups....

Affidavit of [REDACTED] dated September 23, 2007

To corroborate the above, counsel has provided extensive documentation regarding the problematic political and social situation in Pakistan, anti-American sentiment in Pakistan, substandard medical care, especially for young children, and the targeting of physicians and their families living in Pakistan. Moreover, a recently posted Travel Warning, issued by the U.S. Department of State, Bureau of Consular Affairs, dated September 21, 2007, states the following, in pertinent part:

This Travel Warning updates information on security incidents and reminds U.S. citizens of ongoing security concerns in Pakistan. This Travel Warning supersedes the Travel Warning dated December 5, 2006.

The Department of State continues to warn U.S. citizens against non-essential travel to Pakistan in light of the threat of terrorist activity.

The presence of Al-Qaida, Taliban elements, and indigenous sectarian groups poses a potential danger to American citizens, especially along the porous border with Afghanistan. Continuing tensions in the Middle East also increase the possibility of violence against Westerners in Pakistan. Terrorists and their sympathizers have demonstrated their willingness and capability to attack targets where Americans are known to congregate or visit, such as hotels, clubs and restaurants, places of worship, schools, or outdoor recreation events. American fast food restaurants and other companies in Karachi were bombed in late 2005, resulting in several deaths and multiple injuries among Pakistani employees and customers. On March 2, 2006, an American diplomat, his locally employed driver, and three others were killed when a suicide bomber detonated a car packed

with explosives in front of the U.S. Consulate in Karachi. Fifty-two others were wounded.

Fatal bomb attacks have occurred in Islamabad, Karachi, Peshawar, Quetta, Lahore, and other Pakistani cities in 2006 and 2007. Some of the attacks have occurred outside major hotels, market areas and other locations frequented by Americans. Other recent targets have included Pakistani government officials and buildings, and international NGOs.

Travel Warning, U.S. Department of State, Bureau of Consular Affairs, dated September 21, 2007

The applicant also provides numerous letters from residents of Pakistan attesting to the political and social turmoil in Pakistan, the inherent risks for physicians residing in Pakistan, and anti-American sentiment. Dr. [REDACTED], a physician in Pakistan, states the following regarding medical conditions in Pakistan and the hardships the applicant's young child would face due to his medical issues:

.. [REDACTED] is just one-year old and is weak. He is said to have had severe skin infection and is not eating well. His nutrition intake is meager for his age. With time his ailment and nutrition deficiencies could be overcome in rather clean environment and available medical facilities in the U.S.A. These could, however, morph into major health problems in polluted atmosphere of urban areas of Pakistan.

[REDACTED] [the applicant's] return to Pakistan with her child will put him at high risk of health hazards. The water and air in Pakistan have the highest content of pollutants in the world. Water-borne diseases like Typhoid, Hepatitis A, Diarrhea, Gastroenteritis, etc. are very common. The pollution in the air would put her son at high risk of having a skin disorder due to his past Eczema. There are no pediatric nutrition clinics and pediatric dermatologists in Pakistan. Omar requires regular evaluation of his diet and recommendations for the nutrition. He also needs to have frequent follow-ups with his pediatrician.... There is lack of advanced medical technologies and facilities in Pakistan. In event of sickness adequate health care may not be available.... These are the key factors that I consider for [REDACTED] and her child to stay in the U.S.A.

Letter from [REDACTED] dated July 30, 2007.

[REDACTED] a physician who previously practiced in Pakistan, corroborates the targeting of physicians and anti-American sentiment in Pakistan:

...some terrorists, over there [in Pakistan], had been selectively attacking foreign-educated doctors. In Karachi, during the last few years, several doctors were murdered in such attacks, including one of my colleagues from the same hospital where I used to work. Any other foreign-trained doctor could be their next target.

If [REDACTED] [the applicant] were to go back to Pakistan, she and her family would be living and raising their children under a constant fear of impending terrorist attacks.

Recent events in Pakistan have further deteriorated the situation, especially against Americans. Some of these, which got worldwide condemnation, include: at attack on a church that left four people dead, including an American family; kidnapping and subsequent murdering of an American journalist; suicide bombing of a bus, killing 11 Frenchmen; bombing of precincts of an American consulate, causing a dozen deaths and scores of casualties. Hundreds of local civilians have also been killed in numerous other attacks targeting the people who do not toe the line of anti-American zealots....

Letter from [REDACTED] *Al Nagaha Hospital*, dated July 2, 2007.

Based on the political and social turmoil in Pakistan, anti-American sentiment and the emotional and psychological ramifications of such sentiments on a young, U.S. born child, the U.S. Department of State's position on travel to Pakistan by U.S. citizens, the financial hardship the applicant's child would face due to his parents' inability to obtain gainful employment in Pakistan, unfamiliarity with the country, its customs and its language, the targeting of physicians in Pakistan and the child's documented medical problems and Pakistan's substandard health care, the AAO finds that the applicant's U.S. citizen child would experience exceptional hardship were he to accompany the applicant to Pakistan 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 the applicant states,

[REDACTED] [the applicant's child] will be 2 years old when I leave for Pakistan, making him far too young to be abandoned by his mother. My husband will have to work long hours to make ends meet without my presence, making him unavailable to provide the attention and affection a child needs. [REDACTED] will be placed in child care for most hours, effectively separating him from both his mother and father. [REDACTED] is much too young to understand why both of his parents are not present in his life all of a sudden, and this will cause significant psychological problems that he would likely carry with him for the rest of his life...

Supra at 15.

The applicant's child's pediatrician further elaborates on the hardship the applicant's child would face were he to remain in the United States while his mother relocates abroad for two years. As [REDACTED] states,

... [the applicant's child], has been a patient of mine since birth.

There is no question that Omar will suffer deleterious developmental and psychological effects should his mother be coerced to return to Pakistan to fulfill the requirements of her J-1 visa.

The separation of this child from his mother will have long-lasting and immutable effects on this young children....

Letter from [REDACTED], MD, FAAP, Pediatric and Adolescent Medicine, Janet Weis Children's Hospital, dated April 8, 2008.

Additional letters from licensed mental health professionals have been provided to corroborate the statements made above regarding the negative ramifications of separating a mother from her child. The AAO thus concurs with counsel that the psychological ramifications of separating a young child from his mother for a two-year period would cause the child exceptional hardship.

As such, upon review of the totality of the circumstances in the present case, the AAO finds the evidence in the record establishes that the applicant's U.S. citizen child would experience exceptional hardship were he to relocate to Pakistan and in the alternative, were he to remain in the United States without the applicant, for the requisite two-year period.¹ The hardship the applicant's child would suffer if the applicant temporarily departed the U.S. for two years would go significantly beyond that normally suffered upon the temporary separation of families.

The 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.

¹ As exceptional hardship to the applicant's U.S. citizen child has been established, the AAO does not find it necessary to determine whether exceptional hardship has been established with respect to the applicant's U.S. citizen spouse.