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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 22 2005

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Syria. She was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on November 13, 1997 to complete a residency program at the George Washington University Medical Center in Washington D.C. The applicant's status expired in August 2003. The applicant 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). The record reflects that the applicant married [REDACTED], (hereinafter [REDACTED] a United States citizen (USC), on November 12, 2002. The applicant seeks a waiver of her two-year residence requirement in Syria, based on the claim that her husband would suffer exceptional hardship [REDACTED] moved to Syria with the applicant for the two years she is required to live there, or [REDACTED] remained in the United States during the two-year period.

The Director found that the record did not establish that [REDACTED] would experience exceptional hardship if he accompanied the applicant to Syria. Additionally, the Director found that the record did not establish that [REDACTED] would experience exceptional hardship if he remained in the United States while the applicant moved to Syria. The application was denied accordingly.

On appeal, counsel asserts that the Director failed to:

1. Discuss the serious conditions threatening Americans living in Syria;
2. Mention the extreme financial hardship that would occur [REDACTED] were to move to Syria;
3. Mention the extreme detriment to [REDACTED] career were he to move to Syria;
4. Discuss the extreme psychological hardship [REDACTED] will face if he remains in the United States;
5. Provide a coherent reason for the denial, which contained incoherent and nonsensical statements.

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 the Immigration and Naturalization [now, the Director of 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, "[E]ven 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)."

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.)

I. Potential Hardship if Dr. [REDACTED] Accompanies the Applicant to Syria

First analyzed is the potential hardship [REDACTED] will experience if he accompanies the applicant to Syria for the two years she is required to live there.

Counsel contends that [REDACTED] career will be seriously damaged and that he will have a difficult time finding suitable employment in Syria. [REDACTED] has a successful dental practice in Maryland. A move to Syria for two years would disrupt his practice and probably result in many of his patients switching to another dentist. Counsel provided no evidence concerning [REDACTED] ability to practice dentistry in Syria, however, Syrian licensing laws might make it difficult. Also [REDACTED] inability to speak Arabic would seriously limit his employment options, as well as making it difficult for him to adjust to Syrian society.

Counsel maintains that because [REDACTED] a Christian, he will have a difficult time assimilating into Syrian society. Approximately 90 percent of the Syrian population is Muslim. The government generally respects the right to freedom of religion, and the relationship among religions is generally amicable. *International Religious Freedom Report 2004*, Bureau of Democracy, Human Rights, and Labor, United States Department of State, September, 2004. In spite of this religious freedom, being a Christian would make it more difficult for [REDACTED] adjust to life in Syria. In *Matter of Mansour*, 11 I. & N. Dec. 306 (BIA 1965), the Board of Immigration Appeals concluded the following in regard to the USC spouse of an Egyptian who applied for a 212(e) waiver:

In addition, she is of the Christian faith, whereas Egypt is predominantly Moslem. While this would not subject her to persecution, it would preclude normal assimilation in the country and restrict her realm of social intercourse.

Counsel asserts that the current political climate in Syria and the Middle East, as well as the strained relationship between Syria and the United States, would put [REDACTED] at risk in Syria and make it impossible for him to live a normal life. The United States Department of State, in a *Consular Information Sheet on Syria*, Bureau of Consular Affairs, May 24, 2004, stated:

Syria is included on the Department of State's list of State sponsors of terrorism. A number of terrorist groups present in Syria oppose U.S. policies in the Middle East. On April 27, 2004, there was a violent clash in the area of Damascus where many foreign citizens reside, in which three people were killed. A 1997 bombing of a public bus in downtown Damascus, which killed 22 people, and the 1998 and 2000 mob attacks against the U.S. Embassy serve as reminders that Syria is not immune from political violence. Americans traveling through the area should remain aware that U.S. interests and citizens might be targeted.

Counsel stated that since the terrorist attacks of September 11, 2001 against the United States, the situation in Syria has become worse for Americans. Syria opposed the United States invasion of Iraq in 2003, which may have placed an additional strain on the relationship between the two countries. In May 2004, the Bush administration, pursuant to provisions of the Syrian Accountability and Lebanese Sovereignty Restoration Act, implemented sanctions on Syria. *Background Note: Syria*, United States Department of State, Bureau of Near Eastern Affairs, August, 2004.

The AAO finds [REDACTED] will experience exceptional hardship in Syria because of career damage, difficulty in finding employment, difficulty in assimilating because of religion and inability to speak Arabic, and the potential risk to American citizens.

II. Potential Hardship if [REDACTED] Remains in the United States

Next analyzed is the potential hardship [REDACTED] will experience if he stays in the United States while the applicant lives in Syria for two years. Counsel contends that [REDACTED] will suffer exceptional emotional hardship while the applicant is in Syria.

After her visa expired in August 2003, the applicant returned to Syria. [REDACTED] visited the applicant in Syria in September, 2003. [REDACTED] psychologist, has examined [REDACTED] twice and prepared evaluations dated February 12, 2003 and November 5, 2003. In the November 5th evaluation, Dr. [REDACTED] stated:

[REDACTED] reported feeling "extremely distraught" upon receiving the letter from INS notifying him that his wife's petition has not yet been approved. He again stated explicitly that he is very dependent on his wife for support, both emotionally and to help him care for his father.

According to [REDACTED] since his wife's departure, he has been unable to function effectively. He also acknowledged a loss of appetite along with sleep difficulties. He often awakes in the middle of the night feeling apprehensive about his wife and is then unable to return to sleep. As a result, he is suffering from sleep loss and fatigue. His feelings of anxiety, depression, and fatigue have reportedly affected his capacity to work, and he has had to take off several days from work.

[REDACTED] administered three psychological tests. Based on these test results, [REDACTED] diagnosed Dr. [REDACTED] with Adjustment Disorder with Mixed Anxiety and Depressed Mood. *Diagnostic and Statistical Manual of Mental Disorders IV*, Section 309.28. [REDACTED] also concluded that [REDACTED] is experiencing posttraumatic symptoms caused by his wife's departure and by his experiences when he visited her in Syria. [REDACTED] concluded the evaluation by stating "[I]t is this evaluator's professional opinion that if he is not re-united with his wife soon, [REDACTED] symptoms of anxiety and depression would get significantly worse."

[REDACTED] evaluated [REDACTED] but did not treat him for his symptoms. [REDACTED] offered no treatment plan, nor did he refer [REDACTED] for counseling and/or medication. The psychological conditions described by [REDACTED] are potentially treatable. Counsel has not shown that [REDACTED] cannot be treated for his emotional conditions. Accordingly, the AAO finds that the applicant has not established that [REDACTED] will experience exceptional emotional hardship because of being separated from his wife for two years.

III. Conclusion

The AAO finds that the evidence in the record establishes that the applicant's husband would suffer exceptional hardship if he moves to Syria with the applicant for the two years she is required to live there. The AAO also finds that the evidence in the record fails to establish that applicant's husband would suffer exceptional hardship if he remains in the United States during the two years the applicant lives in Syria.

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 not met her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.