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**U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529**



**U.S. Citizenship
and Immigration
Services**

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: OCT 29 2007

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:

[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.

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 appeal will be sustained and 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 (WRD).

The record reflects that the applicant is a citizen of Syria who 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 applicant was admitted to the United States in J1 nonimmigrant exchange status on July 31, 1983 and is subject to the two-year foreign residence requirement. The applicant's spouse and two children (one child and one stepchild) are U.S. citizens. The applicant presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to his spouse and children.

The director determined that the applicant had failed to establish that his spouse would experience exceptional hardship if he fulfilled the two-year foreign residence requirement in Syria. *Director's Decision*, dated March 12, 2007. The application was denied accordingly.

On appeal, counsel asserts that exceptional hardship must be considered under the circumstances of both relocation abroad and separation from spouse and children as a result of remaining in the United States. *Brief in Support of Appeal*, at 4, dated April 6, 2007.

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's divorce decree, physician letters for the applicant's daughter, physician letters for the applicant's spouse, a psychological evaluation of the applicant's spouse, financial information for the applicant and his spouse, prescription copies for the applicant's spouse, a statement from the applicant's spouse's ex-spouse, a joint custody agreement and country conditions information on Syria. The entire record was considered in rendering this decision.

Section 212(e) of the Act states in pertinent part that:

- (e) 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 [now the Director, U.S. Department of State, Waiver Review Division (WRD), "Director"] 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, Department of Homeland Security (DHS), "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. (Quotations and citations omitted).

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 demonstrate that a qualifying relative would suffer exceptional hardship upon relocation to Syria for two years. Counsel states that the applicant's spouse and stepdaughter suffer from chronic medical conditions that require routine visits to the doctor and medical treatment. *Brief in Support of I-612*, at 2, dated September 26, 2006. The record reflects that the applicant's stepdaughter has diabetes mellitus type one, uses an insulin pump and has a history of hospitalizations due to hyperglycemia and dehydration. *Letter from [REDACTED]*, dated August 30, 2006. In addition, the applicant's stepdaughter is being monitored at the UCLA Medical Center on a monthly basis. *Letter from [REDACTED]* dated September 5, 2006. The record reflects that the applicant's spouse has pelvic pain and bleeding due to endometriosis. *Letter from [REDACTED]*, dated August 17, 2006. The applicant's spouse is under the care of a physician for shortness of breath, chest pains and mitral regurgitation, and she needs close follow-up with a cardiologist. *Letter from [REDACTED]* dated August 31, 2006. Therefore, both the applicant's spouse and her daughter would lose established physician relationships and treatment programs for their respective conditions. Counsel asserts that the health system and medical facilities in Syria are substandard compared to the United States and the cost of medical care is extremely high. *Brief in Support of I-612*, at 2. The record reflects that basic medical care is available in Syria's principal cities, but serious illnesses may require evacuation to a Western medical facility. *U.S. Department of State Consular Information Sheet, Syria*, at 3, dated April 3, 2006.

The record reflects that the applicant's spouse shares custody of her daughter with her ex-spouse. *Stipulation/Settlement Agreement*, at 2, dated February 28, 2003. The applicant's spouse's ex-spouse refuses to allow their daughter to travel to Syria for an extended period of time. *Letter from Applicant's Spouse's Ex-Spouse*, dated September 1, 2006. Therefore, it does not appear plausible that the applicant's stepdaughter would be able to reside in Syria for the two-year period. In addition, the applicant's spouse would be separated from her daughter if the applicant's spouse relocated to Syria.

In regard to country conditions, the record reflects that Syria is included on the Department of State's list of state sponsors of terrorism. *U.S. Department of State Consular Information [REDACTED]*, at 2. The record also reflects that Syria has a poor human rights record. *U.S. Department of State Human Rights Report on Syria*, at 1, dated March 8, 2006. Based on the totality of the record, the AAO finds that the applicant's spouse and stepdaughter would suffer exceptional hardship if they resided in Syria for the two-year period. The record does not evidence exceptional hardship to the applicant's son for this prong of the analysis.

The second step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship by remaining in the United States during the two-year period. The applicant states that he and his spouse own two businesses, he manages the businesses, he works six days a week, he is the primary financial supporter of the family, his spouse looks after the children and does the administrative work for the businesses. *Applicant's Statement*, at 2, dated September 26, 2006. The record includes documentation which substantiates the applicant's claim of business ownership. The applicant states that his spouse's parents refuse to accept their interfaith marriage, do not accept their grandson and are not willing to help his spouse if he is gone. *Applicant's Statement*, at 2,4. The applicant states that age discrimination is

prevalent in Syria, it would be difficult for him to find work, his spouse cannot work due to chronic health conditions and his family would face complete financial devastation. *Applicant's Statement*, at 5. The applicant's spouse has pelvic endometriosis, has been treated with intermittent success, needs lighter work and cannot be on her feet for prolonged periods. *Letter from [REDACTED]* The applicant's spouse's psychologist states that the applicant's spouse has an ovarian tumor which requires surgery, she cannot stand without bleeding, and she has a heart murmur and chronic asthma. *Psychological Evaluation*, at 2-3, dated September 11, 2006. Considering the aforementioned evidence, it is plausible that the applicant's family will face significant financial hardship without the applicant.

Counsel states that the applicant's spouse and stepdaughter have sufficient medical coverage as the applicant works and provides the family's only income. *Brief in Support of Appeal*, at 5. The record includes evidence that the applicant has health insurance. *Blue Shield of California Statement*, dated April 11, 2006. Based on the record, the applicant's spouse and stepdaughter would likely have to face their medical problems without health insurance and the applicant's presence. The applicant's spouse's psychologist states that the applicant's spouse is severely depressed based on her fear of the future and her health concerns, and the psychologist recommends psychotherapy. *Psychological Evaluation*, at 2-3. The AAO notes that there is no indication that the applicant's spouse has sought treatment.

In light of the unique financial and medical issues in this case, the AAO finds that exceptional hardship would be imposed on the applicant's spouse and stepdaughter if they remained in the United States during the two-year period. The record does not evidence exceptional hardship to the applicant's son for this prong of the analysis.

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 WRD. Accordingly, this matter will be remanded to the acting director so that he may request a WRD recommendation under 22 C.F.R. § 514. If the WRD 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 WRD recommends that the application not be approved, the application will be re-denied with no appeal.

ORDER: The appeal is sustained and the record of proceeding is remanded to the acting director for further action consistent with this decision.