



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 26 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 cursive script, 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 to participate in graduate medical training in October 2004. 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).¹ The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen child, born in May 2005, would suffer exceptional hardship if he moved to Pakistan temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Pakistan.

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

In support of the appeal, counsel for the applicant provides the following documentation: a brief, dated November 6, 2007; articles regarding country conditions and health care in Pakistan; letters from Pakistan nationals attesting to problematic country conditions and health care in Pakistan; and an additional statement from the applicant. 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

¹ The record indicates that the applicant's spouse entered the United States as a J-2, based on her derivative status as a spouse of the applicant, a J-1 visa holder. As such, the applicant's spouse is also subject to the two-year foreign residency requirement.

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 child would experience exceptional hardship if he resided in Pakistan for two years with the applicant. To support this contention, the applicant states the following:

...My American born son will suffer tremendously if he returned to Pakistan with me, for the following reasons:

- (a) my son is American, which would subject him to persecution and risk of violence due to the political unrest and terrorism against Americans that is rampant in Pakistan;
- (b) Since I am a Physician, my son and I may be specifically targeted for death by extremist groups which have already killed more than 70 physicians during the past few years in Pakistan.... Should I be assassinated, it will have a harsh impact on my son's growth and development;
- (c) my American son would be required to attend poorly regarded Pakistani schools with education in Urdu, a language that he does not understand;
- (d) the poor health conditions and facilities in Pakistan would be make it impossible for my U.S. citizen young son to obtain proper medical treatment or preventive care.
- (e) kidnapping, violent crime and armed robbery, occur in many parts of Pakistan, particularly in Karachi.... Because my son is an American citizen, it will be assumed my family has a tremendous amount of money, making him an extremely susceptible target.
- (f) the recent devastating earthquake in Pakistan has killed more than 50,000 Pakistanis and has decimated the infrastructure and social services in much of Pakistan....

Please note that the risk of death and violence to Physicians and their families in Pakistan is real and immediate. More than 70 Physicians have been assassinated during the past few years in Pakistan, and their families targeted for further persecution and violence.... My son, because he is American born, and because he is the son of a Physician would be at a huge risk for violence and potential death by spending any amount of time in Pakistan as he would have two strikes against his—American and son of a Physician....

Affidavit of [REDACTED] dated April 12, 2007.

To corroborate the above, counsel has provided a number of articles regarding the problematic political and social situation in Pakistan, and the dangers to 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:

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.

U.S. citizens who travel to or remain in Pakistan despite this Travel Warning are encouraged to register with the Embassy in Islamabad or the Consulates in Karachi, Lahore, or Peshawar. This registration can be completed online through the Department of State's travel registration website: <https://travelregistration.state.gov>. Alternatively, Americans without Internet access should contact the nearest Embassy or Consulate for information on registering in person. Registration enables citizens to obtain updated information on travel and security within Pakistan via the emergency alert system (warden

network). Americans in country should take appropriate individual precautions to ensure their safety and security. These measures include maintaining good situational awareness, avoiding crowds and demonstrations and keeping a low profile. Americans should avoid setting patterns by varying times and routes for all required travel. Americans should ensure that their travel documents and visas are valid at all times.

From time to time, any post in Pakistan may temporarily suspend public services for security reasons. Official Americans may be prohibited from traveling to certain areas of Pakistan due to security concerns. Therefore, they may not be able to render immediate service to American citizens in distress. The websites of the Embassy and Consulates are regularly updated with the latest information on more specific travel restrictions and conditions.

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] states the following:

...As physicians, we live in constant fear of death. More than 100 physicians have been killed throughout Pakistan in the last few years in violence directed towards professionals, most notably physicians. While the majority of the violence is directed to the Shia Muslim minority, the perpetrators of such violence often target medical professional regardless of whether Shia or Sunni. The violence is not limited to Karachi, but indeed extends throughout multiple areas of the country. Families of physicians have been targeted as well for violence. Due to the increasing dangers present for physicians in Pakistan, many of my colleagues have fled the country.... It is not safe for physicians here in Pakistan....

There is much outrage in this country against Americans and Westerners, especially as America's War on Terror continues to be ongoing. Demonstrations, many violent, occur frequently.... Due to the dangers present, there are indeed very few Americans living in Pakistan.... Due to the [applicant's] child's American citizenship, he will certainly be a target for kidnapping and potential violence by extremists. It would be impossible for the son's citizenship not to be disclosed, as such is required for schooling, etc. Moreover...Dr. Ali's [the applicant's] son would be forced to undergo schooling wholly in Urdu (a language the child certainly does not understand), and the education he would receive would include substantial anti-American sentiment....

Letter from [REDACTED] dated October 20, 2007.

The applicant's father-in-law, a drug representative for a pharmaceutical company in Karachi, Pakistan, states the following:

...As you know the political situation in Pakistan is changing very quickly and dramatically especially in last few months. And sadly just along on 12th May 2007, Karachi saw its worst violence in years when rival political groups clashed in Karachi, killing some 34 people and injuring at least 120. Law and order situation is out of control, armed robberies, kidnapping, suicide attacks and bomb blast are a frequent occurring.

I am a citizen of Karachi city have eye witnessed some of these incidents myself....

Recently, I was driving home when few youngsters took my car away from me on gunpoint. It was a brand new car, I did file a report for my missing car, nothing happened for few months, then I came to know that my car was recovered during an operation against some terrorist, and it was used in multiple robberies, shooting and killing incidents. My car was completely destroyed.

About a year back I was coming home from a friend's house with my wife in the evening, I was not aware that two political parties had a clash.... All of a sudden three armed person stopped me, put an injured person in my car and asked me to drive, I was terrified but I had to drive the car away from scene of crime because, I was asked to do so on gunpoint. Running away from these guys did put my wife and me at great risk but I had no other option then to follow their commands.... I will never be able to forget it.

The third incident, which I would like to mention over here, is very said [sic]. My nephew...who was just 18 years old was killed in 2005 when he was caught in the middle of cross firing between police and armed members of a political party. He had a gunshot wound to his head and died on the spot. No one was captured or held responsible for his murder. That was a great tragedy for the entire family. I believe that its not just me but every citizen of Pakistan has a story of their own to tell, because lawlessness, crime, terrorism, sectarian violence, armed robberies, kidnapping is so rampant that everyone is affected in one way or the other....

Letter from [REDACTED], dated October 20, 2007.

[REDACTED], a physician in Pakistan, states the following regarding the health conditions in Pakistan:

...Health facilities in Pakistan are completely inadequate, mainly due to a lack of resources and a high population growth rate. The country needs food, a proper water supply, and adequate sanitation. Recent statistics indicate that more than 30% of children under five years old are malnourished. Moreover, the lack of proper preventive care and sanitation measures has resulted in an increasing number of reported cases of Tuberculosis...and Malaria.... In addition to malaria and TB, intestinal diseases, lung diseases...and skin diseases continue to plague the Pakistani people....

The health risks to infants and young children are very significant in Pakistan. The infant mortality rate is 83 per 1,000 live births, more than 10 times the rate that exists in the United States. Major causes of infant mortality are immunizable diseases, diarrhea, malnutrition, and poor environmental sanitation. It is just not possible to obtain proper medical care for infants and young children in Pakistan. Western standard medical care is simply not available anywhere in the country—moreover, obtaining any medical care is often prohibitively expensive, as there is no health insurance.... Moreover, there are virtually no emergency medical services in the country, and deaths often occur due to the delays in obtaining any medical treatment which exists....

...There is no question that their child will face numerous health risks as noted above. Moreover, the child will not be able to undergo the necessary immunizations, which would put him at great risk for many deadly diseases in Pakistan. The risks to [REDACTED] [the applicant's] child's health by moving to Pakistan for any length of time are real, immediate, and severe....²

Letter from [REDACTED] dated October 12, 2007.

Based on the political and religious turmoil in Pakistan and the security and health concerns referenced above, 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 child would suffer exceptional hardship if he remained in the United States during the two-year period that the applicant resides in Pakistan. The applicant asserts that it would be impossible for the applicant's child to remain in the United States for

² The record indicates that on a trip to Pakistan in 2007, the applicant's son "...developed a prolonged GI illness leading to wt loss and a decrement in his growth percentiles. I would recommend against a return stay to Pakistan....suboptimal environmental conditions and increasing the risk of a recurrence...." Letter from [REDACTED], MD, *Kennebec Pediatrics*, dated October 10, 2007.

two years while the applicant returned to Pakistan because no one would be available to care for his child. As stated by the applicant,

...Sine my wife is on J-2 visa, she will be required to return to Pakistan as well. As a result, our US citizen son would be left by himself in the U.S. Due to his very young age, he certainly would not be able to take care of himself, as he would have nowhere to live and no one to take care of his [sic]. The hardships that he would face would be extraordinary and unimaginable....

Supra at 1.

As the record indicates, both the applicant and his wife are J visa holders subject to the two-year foreign residency requirement. Such a requirement would leave their young child in the United States without his parents. This situation would constitute exceptional hardship to the applicant's child if he remained in the United States.

The AAO finds that the applicant has established that his 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 term. As such, upon review of the totality of circumstances in the present case, the AAO finds the evidence in the record establishes 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 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.