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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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

H3

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **DEC 07 2010**

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. The matter 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, a native and citizen of Egypt, obtained J-1 nonimmigrant exchange status in August 2008. He is subject to the foreign residence requirement under section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e) based on government financing. The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen spouse would suffer exceptional hardship if she moved to Egypt temporarily with the applicant and in the alternative, if she remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Egypt.

The director determined that the applicant failed to establish that a qualifying relative would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Egypt. *Director's Decision*, dated June 28, 2010. The application was denied accordingly.

On appeal, the applicant submits a letter and 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 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, 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 would experience exceptional hardship if she resided in Egypt with the applicant. To begin, the applicant asserts that his spouse would suffer career disruption and the loss of numerous employment benefits, including medical insurance, were she to relocate abroad. In addition, the applicant notes that his wife is a native of the United States and would suffer were she to relocate abroad due to unfamiliarity with the language, country, culture and customs. Moreover, the applicant contends that due to the substandard economy in Egypt, he and his wife would not be able to obtain gainful employment, thereby lowering his wife’s standard of living. Finally, the applicant states and documents that his wife has been diagnosed with numerous medical and mental health conditions, including major depression, diabetes, sleep apnea, hyperlipidemia and knee problems and a relocation abroad would cause her medical hardship, as she would not have health coverage in Egypt. Even if the applicant’s spouse were able to receive treatment in Egypt, the applicant’s spouse contends that medical care in Egypt is substandard and she would not be able to continue treatment with the physicians that are familiar with her conditions. *Statement from* [REDACTED] dated November 5, 2009 and *Letter from* [REDACTED] and [REDACTED] dated May 7, 2010.

In support, extensive documentation establishing the applicant’s spouse’s medical and mental health situation has been provided. In addition, evidence of anti-depressants prescribed to the applicant’s spouse to treat her depression has been provided. Moreover, evidence of the applicant’s spouse’s gainful employment has been submitted. Finally, documentation to support the applicant’s assertions regarding the problematic country conditions in Egypt, including the lack of quality medical care¹ and a substandard economy has been provided by counsel.

Based on a totality of the circumstances, the AAO concurs with the director that the applicant’s U.S. citizen spouse would suffer exceptional hardship were she to relocate to Egypt due to the problematic country conditions, the applicant’s spouse’s documented medical and mental health conditions and substandard medical care, long-term separation from her employment, her medical and mental health care providers, her community and her country, unfamiliarity with the country, customs and language and the lower standard of living due to a substandard economy. A relocation abroad would cause the applicant’s spouse hardship that would be significantly beyond that normally suffered upon the temporary relocation of families due to a foreign residency requirement.

The second step required to obtain a waiver is to establish that the applicant’s U.S. citizen spouse would suffer exceptional hardship if she remained in the United States during the period that the applicant resides in Egypt. The applicant contends that his spouse would suffer exceptional hardship were he to relocate abroad for a two-year period, as she is dependent on him to help care for her on a daily basis. The applicant notes that his wife is depressed and her mental health condition will be exacerbated should her spouse relocate abroad for a two-year period. He further notes that his wife has numerous medical conditions that require his daily care but were he to relocate abroad, his wife

¹As noted by the U.S. Department of State, medical care in Egypt falls short of U.S. standards. *Country Specific Information-Egypt, U.S. Department of State*, dated September 29, 2010.

would suffer hardship. He further contends that due to the problematic country conditions in Egypt, he will be unable to contribute to the finances of the household, thus causing his spouse, who is already in default and at risk of losing their home, financial hardship. *Letter from [REDACTED] and [REDACTED]*

Documentation has been provided establishing the applicant's spouse's medical and mental health conditions. As noted by the applicant's spouse's psychotherapist, the applicant's spouse has a longstanding history of depressed mood episodes and anxiety and has been prescribed medications and should the applicant relocate abroad, her mental and emotion stability will be in jeopardy and her progress in treatment will suffer. *Letter from [REDACTED]* dated July 16, 2010. A letter from the applicant's primary care physician establishes that the applicant's spouse has suffered from depression in the past, and in 2008, was receiving care including medication management. *Letter from [REDACTED]* dated July 7, 2010. In addition, documentation has been provided establishing that the applicant's spouse has a cyst that needs further observation, recently diagnosed diabetes, and a lump on her breast. *Email from [REDACTED]*, dated April 7, 2010, *Email from [REDACTED]* dated October 21, 2010 and *Letter from [REDACTED]* dated May 6, 2010. Moreover, a letter has been provided establishing that the applicant's spouse needs to undergo abdominal surgery and consequently will be unable to drive, lift, stretch, bend, twist or do repetitive standing. *Letter from [REDACTED]* dated January 20, 2010. The applicant has also documented that his wife needs arthroscopic procedures on both of her knees, at separate times, and recovery is 4-8 weeks. *Letter from [REDACTED]* dated November 17, 2009. Finally, the applicant has provided evidence of his wife's financial obligations and her current default status, to establish that his financial contributions, upon receipt of employment authorization, are critical to his wife's livelihood. *Notice of Intent to Accelerate*, dated July 6, 2010.

The AAO has determined that the applicant's U.S. citizen spouse would experience exceptional hardship if she remained in the United States while the applicant relocated to Egypt to comply with his two-year foreign residency requirement. The applicant's spouse would be separated from her spouse on a long-term basis, while suffering from numerous medical and mental health conditions and financial default status. The applicant's spouse needs her husband's daily emotional, physical and financial support. The applicant's departure for a two-year period would cause the applicant's spouse hardship that would be significantly beyond that normally suffered upon the temporary separation of families.

The AAO thus concludes that the applicant has established that his U.S. citizen spouse would experience exceptional hardship were she to relocate to Egypt and in the alternative, were she to remain in the United States without the applicant, for the requisite term. The evidence in the record establishes the hardship the applicant's spouse would suffer if the applicant temporarily departed the U.S. 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 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.