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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
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Services

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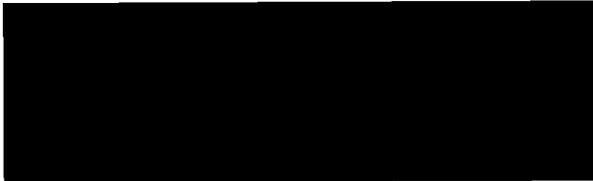


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JUL 20 2010**

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).

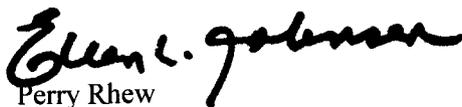
ON BEHALF OF APPLICANT:



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,


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 Yemen, obtained J-1 nonimmigrant exchange status in August 2004. 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 and child, born in 2009, would suffer exceptional hardship if they moved to Yemen temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Yemen.

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 Yemen. *Director's Decision*, dated March 18, 2010. The application was denied accordingly.

On appeal, counsel for the applicant submits a brief, dated May 18, 2010, and supporting documentation. 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(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 Yemen with the applicant. To begin, the applicant's spouse asserts that she would be in fear for her and her young child's life in Yemen, as she contends the country is plagued by terrorism, extreme poverty and poor health and educational systems. The applicant's spouse further notes that as a native of the United States, she would suffer emotional hardship were she to reside in Yemen as she is unfamiliar with the country, culture and customs. She would also suffer hardship due to long-term separation from her family, including her father and siblings, her community and her friends. Moreover, the applicant's spouse asserts that due to the substandard economy in Yemen, her spouse would not be able to obtain gainful employment, thereby lowering her standard of living. Finally, the applicant's spouse states and documents that she has been diagnosed with numerous medical conditions, including major depression, diabetes, hypertension, high blood pressure, high cholesterol, cervical radiculopathy, bilateral carpal tunnel syndrome, and allergies, and a relocation abroad would cause her medical hardship, as she would not have health coverage in Yemen. Even if the applicant's spouse were able to receive treatment in Yemen, the applicant's spouse contends that medical care in Yemen is substandard and she would not be able to continue treatment with the physicians that are familiar with her conditions. *Affidavits of* [REDACTED] dated May 14, 2010 and November 19, 2008.

In support, extensive documentation establishing the applicant's spouse's medical and mental health situation has been provided, including copies of prescriptions and information explaining their importance, medical reports, and letters from the applicant's spouse's treating physician since October 2007, Dr. [REDACTED] her psychiatrist, Dr. [REDACTED] M.D., and a licensed clinical social worker, [REDACTED]. In addition, evidence of anti-depressants prescribed to the applicant's spouse to treat her depression has been provided by counsel. Moreover, numerous letters in support have been provided by the applicant's spouse's family members, establishing her close ties to her family. Finally, documentation to support the applicant's assertions regarding the problematic country conditions in Yemen, including the lack of quality medical care, a substandard economy, and a high threat of terrorist activity, has been provided by counsel. The AAO notes that a Travel Warning has been issued, urging U.S. citizen and lawful permanent residents to defer travel to Yemen. *Travel Warning-Yemen, U.S. Department of State*, dated February 25, 2010.

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 Yemen due to the problematic country conditions, the applicant's spouse's documented medical conditions and substandard medical care, long-term separation from her extended family members, 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 Yemen. The applicant's spouse contends that she would suffer exceptional hardship were her spouse to relocate abroad for a two-year period, as she is dependent on him to help care for her and their child, emotionally, physically and financially, on a daily basis. She notes that she is depressed and her mental health condition will be exacerbated should her spouse relocate abroad for a two-year period. She further contends that due to the problematic country conditions in Yemen, she will not be able to travel to Yemen regularly to visit her spouse. Moreover, the applicant's spouse asserts that she is unemployed and is dependent on her spouse's financial contributions, but were he to relocate abroad while she remains in the United States, she will become sole breadwinner and caregiver to her young child, while suffering from numerous medical and mental health conditions, thereby causing her exceptional hardship. *Supra* at 1-2.

Documentation has been provided establishing the applicant's spouse's medical conditions. In addition, counsel has provided documentation establishing the applicant's financial contributions to the household, their financial obligations and the lack of gainful employment opportunities in Yemen, to support the contention that were the applicant to relocate abroad, the applicant's spouse would suffer financial hardship. Moreover, counsel has documented the applicant's spouse's diagnosed depression due to her spouse's two-year foreign residence requirement. Finally, as noted above, a travel warning has been issued, recommending that U.S. citizens and lawful permanent residents defer travel to Yemen due to a high security threat level as a result of terrorist activity.

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 Yemen to comply with his two-year foreign residency requirement. The applicant's spouse would be required to assume the role of primary emotional and financial caregiver to herself and their young child, while suffering from numerous medical and mental health conditions and fearing for her husband's safety in Yemen, without the complete support of her spouse. 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 Yemen 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.¹

The burden of proving eligibility for a waiver under section 212(e) of the Act rests with the

¹ As the AAO has determined that exceptional hardship exists with respect to the applicant's U.S. citizen spouse were the applicant to relocate to Yemen for a two-year period, it is not necessary to evaluate whether the applicant's U.S. citizen child would experience exceptional hardship were the applicant to relocate abroad for a two-year period.

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.