U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

DATE: APR 0 3 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

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:

[redacted]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Perry Rhew
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 dismissed.

The applicant is a native and citizen of Egypt who was admitted to the United States in J-1 nonimmigrant exchange status in August 2009. He 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) 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 his two-year foreign residence requirement in Egypt.

The director determined that the applicant failed to establish that his spouse would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Egypt. *Director's Decision*, dated September 27, 2011. The application was denied accordingly.

In support of the appeal, counsel submits the following: a brief, dated November 22, 2011; medical documentation pertaining to the applicant and his spouse; documentation regarding country conditions in Egypt; financial documentation; and evidence establishing the applicant's business. 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
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> (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 applicant's U.S. citizen spouse contends that she will suffer emotional and financial hardship if she relocated to Egypt to reside with the applicant for a two-year period. To begin, the applicant explains that she and her daughter have no ties to Egypt and would thus experience hardship having to adjust to a new country, language, culture and customs. The applicant's spouse further details that she suffers from numerous medical conditions, including kidney stones and a pre-cancer problem that both require follow-up, and were she to relocate abroad, she would suffer as she would not be able to obtain affordable and effective medical treatment by physicians familiar with her treatment plan. *Declaration of* [redacted] dated June 27, 2011. In a separate statement, the applicant details that employment and education in Egypt cannot be compared to the system in the United States and a relocation broad would cause his wife and child great psychological and emotional damage. *Declaration of* [redacted] dated June 27, 2011. Finally, counsel asserts that as a result of the language barrier, the applicant's spouse will not be able to obtain gainful employment in Egypt, thereby causing her financial hardship. In addition, counsel references the problematic country conditions in Egypt, including instability and danger. *See Brief in Support of Appeal,* dated November 22, 2011.

The record reflects that the applicant's U.S. citizen spouse, born in Mexico, would relocate to a country with which she is not familiar, leaving behind her gainful employment, the professionals familiar with her medical conditions and treatment plan, her gainful employment, and her long-term ties to the United States. Furthermore, the U.S. Department of State confirms that medical care falls short of U.S. standards in Egypt. *Country Specific Information-Egypt, U.S. Department of State,* dated February 24, 2012. Finally, counsel evidences that the U.S. Department of State has issued a Travel Alert for Egypt, advising U.S. citizens of the continuing possibility of sporadic unrest. *Travel Alert-Egypt, U.S. Department of State,* dated November 7, 2011. It has thus been established that the applicant's spouse would suffer exeptional hardship were she to relocate abroad to reside with the applicant due to his two-year foreign residency requirement.

With respect to remaining in the United States while the applicant relocates abroad for a two-year period, the applicant's spouse first explains that she and her daughter rely on the applicant emotionally and financially and were he to relocate abroad for a two-year period, they would experience emotional hardship. In addition, the applicant's spouse contends that she was recently diagnosed with kidney stones and she thus needs her husband to help care for her and her child, especially when she is in pain. The applicant's spouse further asserts that she fears for her husband's

safety in Egypt due to instability in the country. *Supra* at 1. In his declaration, the applicant contends that without his income, his wife and child will experience financial hardship. *Supra* at 1.

To begin, no supporting documentation has been provided establishing the emotional hardship the applicant's spouse asserts she and her child will suffer were the applicant to relocate abroad for a two-year period. Nothing in the record indicates that the applicant's spouse or child would be unable to travel to Egypt to visit the applicant during his two-year absence. In addition, in regards to the medical hardship referenced, although the record establishes that the applicant's spouse recently underwent surgery for kidney stones and has been diagnosed with a pre-cancer condition, the record fails to establish the applicant's spouse's current medical diagnosis, the short and long-term treatment plan, the severity of the situation, and most notably, what specific hardships she will experience were the applicant to relocate abroad for a two-year period. Moreover, no documentation has been provided establishing that the applicant's spouse's child would be unable to obtain emotional and/or financial assistance from her biological father while the applicant is physically absent. As for the applicant's safety while in Egypt, although counsel has submitted information about country conditions in Egypt, the information is general in nature and does not establish that the applicant specifically will be in danger were he to relocate to Egypt for a two-year period, thereby causing hardship to his U.S. citizen spouse and child.

As for the financial hardship referenced by the applicant, no current financial documentation has been provided outlining the applicant and his spouse's expenses and assets and liabilities, to establish that without the applicant's physical presence in the United States, the applicant's spouse will experience financial hardship. In addition, no documentation has been provided that establishes that the applicant would be unable to obtain gainful employment in Egypt, thereby assisting in the U.S. household's finances. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As such, it has not been established that the applicant's spouse would suffer exceptional emotional and/or financial hardship were she to remain in the United States while her spouse relocated to Egypt to fulfill his foreign residency requirement.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen spouse will face exceptional hardship if the applicant's waiver request is denied. Although the AAO finds that the applicant would suffer exceptional hardship if she moved to Egypt with the applicant for the requisite two-year period, the applicant has failed to establish that his spouse would suffer exceptional hardship were he to relocate to Egypt while she remained in the United States.

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 his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.