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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **FEB 19 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:

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 black ink that reads "Perry Rhew".

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 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 of Pakistan, obtained J-1 nonimmigrant exchange status in 1997 to participate in graduate medical training. 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). The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen spouse and step-child, born in 2005, would suffer exceptional hardship if they moved to Pakistan 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 Pakistan.

The director determined that the applicant failed to establish that his U.S. citizen spouse and/or step-child would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Pakistan. *Director's Decision*, dated June 2, 2009. The application was denied accordingly.

In support of the appeal, counsel for the applicant submits a brief and referenced exhibits. 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 and/or step-child would experience exceptional hardship if they resided in Pakistan for two years with the applicant. In a declaration, the applicant contends that his U.S. citizen spouse would suffer emotional and financial hardship were she to relocate to Pakistan to reside with the applicant for a two-year period. He notes the poor environmental conditions and exposure to diseases, violence, in general and specifically, against physicians, anti-American sentiment, and the political, social, economic and religious instability of the country. He further references that his spouse would suffer due to her inability to speak Urdu. Finally, he asserts and documents that were his spouse to relocate to Pakistan to reside with the applicant, she would lose custody of her child from her previous marriage, as the child's biological father would not allow the child to relocate to Pakistan. *Affidavit of* [REDACTED] dated October 31, 2008.

Extensive documentation has been provided by counsel to support the applicant's assertions regarding the problematic country conditions in Pakistan, including high crime, political, social and religious upheaval, anti-American sentiment, a substandard economy and the targeting of physicians and their families living in Pakistan. The AAO notes that the U.S. Department of State has issued a Travel Warning for U.S. citizens intending to travel to Pakistan. As the U.S. Department of State notes, in pertinent part:

The State Department warns U.S. citizens of the risks of travel to Pakistan. This Travel Warning replaces the Travel Warning dated June 12, 2009, updates information on security incidents and reminds U.S. citizens of ongoing security concerns in Pakistan.

The presence of Al-Qaida, Taliban elements, and indigenous militant sectarian groups poses a potential danger to American citizens throughout Pakistan, especially in the western border regions of the country. Flare-ups of tensions and violence in the many areas of the world also increase the possibility of violence against Westerners. Terrorists and their sympathizers regularly attack civilian, government, and foreign targets, particularly in the NWFP. The Government of Pakistan has heightened security measures, particularly in the major cities. Threat reporting indicates terrorist groups continue to seek opportunities to attack locations where Americans and Westerners are known to congregate or visit, such as shopping areas, hotels, clubs and restaurants, places of worship,

schools, or outdoor recreation events. In recent incidents, terrorists have disguised themselves as Pakistani security forces personnel to gain access to targeted areas. Some media reports have recently falsely identified U.S. diplomats – and to a lesser extent U.S. journalists and NGO workers – as being intelligence operatives or private security personnel.

Since October 2009, terrorists have executed coordinated attacks with multiple operatives using portable weaponry such as guns, grenades, RPGs, and suicide vests or car bombs in Peshawar, Lahore and Rawalpindi. Recent attacks included armed assaults on heavily-guarded sites such as the Pakistani Army headquarters in Rawalpindi, the United Nations World Food Program's office in Islamabad, police training complexes in Lahore; targeted assassinations, including attacks on Pakistani military officers and politicians in Islamabad, as well as an Iranian diplomat in Peshawar; and suicide bomb attacks in public areas, such as an Islamabad university, a Rawalpindi mosque, and major marketplaces in Lahore and Peshawar.

Americans have been victims in such attacks. The October 2009 attack on the World Food Program headquarters resulted in the serious injury of an American citizen. On November 12, 2008, a U.S. government contractor and his driver in Peshawar were shot and killed in their car. In September 2008, over 50 people, including three Americans, were killed and hundreds were injured when a suicide bomber set off a truck filled with explosives outside a major international hotel in Islamabad. In August 2008, gunmen stopped and shot at the vehicle of an American diplomat in Peshawar. In March 2008, a restaurant frequented by Westerners in Islamabad was bombed, killing one patron and seriously injuring several others, including four American diplomats. On March 2, 2006, an American diplomat, a Consulate employee, and three others were killed when a suicide bomber detonated a car packed with explosives alongside the U.S. Consulate General in Karachi. Fifty-two others were wounded.

Since 2007, several American citizens throughout Pakistan have been kidnapped for ransom or for personal reasons. Kidnappings of foreigners are particularly common in the NWFP and Balochistan. In 2008, one Iranian and two Afghan diplomats, two Chinese engineers, and a Polish engineer were kidnapped in NWFP. In February 2009, an American UNHCR official was kidnapped in Balochistan. Kidnappings of Pakistanis also increased dramatically across the country, usually for ransom.

According to the Department of State's 2008 Human Rights Report for Pakistan, there were over 200 terrorist attacks, including more than 65 suicide bombings, which killed an estimated 970 civilians and security personnel. Some of the attacks have occurred outside major hotels, in market areas and other locations frequented by Americans. Other targets have included restaurants, Pakistani government officials and buildings, police and security forces, mosques, diplomatic missions and international NGOs. Since late 2007, occasional rockets have targeted areas in and around Peshawar.

Rallies, demonstrations, and processions occur regularly throughout Pakistan on very short notice. The December 2007 death of former Prime Minister Benazir Bhutto, a clash between two groups of lawyers in April 2008, ethnic clashes in December 2008, and the bombing of a religious procession in December 2009, each triggered widespread rioting in Karachi. Multiple deaths and injuries as well as widespread property damage occurred on each occasion. Demonstrations have often taken on an anti-American or anti-Western character, and Americans are urged to avoid large gatherings.

Travel Warning, U.S. Department of State, dated January 7, 2010.

Based on the political and social turmoil in Pakistan, anti-American sentiment, the applicant's spouse's unfamiliarity with the language, customs and culture, the U.S. Department of State's position on travel to Pakistan by U.S. citizens, financial hardship, the targeting of physicians in Pakistan, environmental concerns, and the applicant's spouse's current custodial arrangement, the AAO finds that the applicant's U.S. citizen spouse would experience exceptional hardship were she 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 U.S. citizen spouse and/or child would suffer exceptional hardship if they remained in the United States during the period the applicant resides in Pakistan. In a declaration, the applicant's spouse asserts that she suffers from a generalized anxiety disorder, which will worsen were her spouse to relocate abroad for a two-year period. In addition, she contends that she would suffer financial hardship were her spouse to relocate abroad temporarily, as she is currently employed by her husband's medical practice as an office manager, earning over \$80,000, but were she to obtain employment as a Registered Nurse, she would suffer a significant loss of income. Moreover, she notes that were her husband to relocate abroad, she would be forced to become primary caregiver to two children, without the financial and emotional support of her spouse. Furthermore, she references that she is working towards a Master's Degree while employed full-time, but were her spouse to relocate abroad, she would not be able to complete her studies as she would not have the financial and emotional resources to complete her coursework, thereby causing her significant academic and professional disruption. Finally, she notes that her child from a previous marriage would suffer

feelings of loss and abandonment were the applicant to relocate abroad, and her unborn child, due to be born in August 2009, would lose his father for a two-year period, thereby causing the applicant's spouse emotional hardship. *Affidavit of* [REDACTED] dated July 2, 2009.

In support, counsel has provided documentation with respect to the applicant's spouse's mental health. As [REDACTED] notes,

She [the applicant's spouse] has been under my care since 2006, and has been a patient in my practice since 2003. She has a history of Generalized Anxiety Disorder, was previously treated with medications. Due to her recent pregnancy, she has been trying to deal with her Anxiety D/O through Individual Psychotherapy.

[REDACTED] [the applicant's spouse] has had a difficult time in dealing with her Anxiety D/O, and this is further compounded by her recent concern that her husband, [REDACTED] [the applicant]...an Infectious Disease Specialist...may be required to leave the United States.... [REDACTED] is unable to go with [REDACTED] to Pakistan...due to her joint custody agreement with her ex-husband regarding their 4 year old son.

The frustration of the situation, the fear of the unknown, the anxiety of the possible loss of her husband the father of her as yet unborn child, and the difficulty of this situation will place on her life and 4 year old son is making her Anxiety D/O exacerbate and become more unmanageable....

Letter from [REDACTED]; dated June 25, 2009.

In addition, financial documentation has been submitted, including budgets and estimated costs of childcare coverage, establishing the applicant's contributions to the finances of the household as an Infectious Disease Specialist, and further corroborating the applicant's spouse's assertion that without the applicant's income, she will suffer financial hardship. Finally, evidence establishing that the applicant's spouse is scheduled to complete her Master's Degree in August 2010 has been provided by counsel. *See Current Enrollment Verification Certificate*, dated June 26, 2009.

Based on the record, 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 Pakistan to comply with his foreign residency requirement. The applicant's spouse would be required to assume the role of primary caregiver to two young children, while maintaining full-time employment, while suffering from anxiety. Moreover, the record indicates that the applicant's spouse is integrated into the U.S. lifestyle and educational system; she is currently pursuing her advanced degree while relying on the applicant's financial and emotional support. The Board of Immigration Appeals (BIA) found that a U.S. citizen spouse who was in pursuit of an advanced degree and was thus completely dependent on her spouse for support would encounter exceptional

hardship if her spouse's waiver request was not granted. *Matter of Chong*, 12 I&N Dec. 793, Interim Decision (BIA 1968). The AAO finds *Matter of Chong* to be persuasive in this case due to the similar fact pattern. Were the applicant's waiver request denied, his spouse would have to cease the pursuit of her studies due to financial hardship and the need to care for her children as a single parent, all without the continued support of her husband. Such a disruption at this stage of her education would be significant as to constitute exceptional hardship.

The AAO thus concludes that the applicant has established that his U.S. citizen spouse would experience exceptional hardship were she to relocate to Pakistan and in the alternative, were she to remain in the United States without the applicant, for the requisite two-year 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 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 he 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.

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 Pakistan for a two-year period, it is not necessary to evaluate whether the applicant's U.S. citizen step-child would experience exceptional hardship were the applicant to relocate abroad for a two-year period.