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U.S. Citizenship
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Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: AUG 05 2005

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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a citizen of Iran. He was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on August 13, 1996 to receive graduate medical training at St. Barnabas Hospital in New York. The applicant 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). The record reflects that the applicant married [REDACTED] a United States citizen, on May 25, 2002. [REDACTED] has four United States citizen children from a previous marriage to [REDACTED]'s son [REDACTED] is nineteen years old, and her triplet daughters, [REDACTED] and [REDACTED] are seventeen years old. The applicant seeks a waiver of his two-year residence requirement in Iran, based on the claim that his wife and stepchildren would suffer exceptional hardship if they moved to Iran with the applicant for the two years he is required to live there, or if they remained in the United States.

The director found that the applicant's wife and stepchildren would experience exceptional hardship if they accompanied the applicant to Iran for two years. The director also found that the applicant's wife and stepchildren would not experience exceptional hardship if they remained in the United States while the applicant lived in Iran for two years. The application was denied accordingly. *Decision of the Director*, Vermont Service Center, dated November 1, 2004.

On appeal, the applicant (through his wife) contends that his wife and stepchildren will experience exceptional hardship if they are separated from him for two years. In support of the appeal, the applicant submitted a letter from his wife dated December 2004. In support of the original waiver application, counsel submitted a brief; various documents related to the applicant's immigration status; a marriage certificate for the applicant and [REDACTED] birth certificates for the children; the divorce decree dissolving the applicant's first marriage; an affidavit from [REDACTED] dated October 20, 2003; a psychological evaluation of [REDACTED] and the children dated July 25, 2003; a psychological evaluation of the children dated May 24, 2004; an order confirming that [REDACTED] filed for bankruptcy in April, 2000; documents related to the applicant's professional position as a physician; U.S. Department of State travel warnings on Iran; and various articles on country conditions in Iran. The entire record was 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 the Immigration and Naturalization [now, the Director of 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(I): 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, "[E]ven 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)."

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.)

I. Potential Hardship if [REDACTED] and the Children Accompany the Applicant to Iran

First analyzed is the potential hardship [REDACTED] and the children will experience if they move to Iran with the applicant for the two years he is required to live there. The director concluded "it is obvious that your U.S. citizen wife and stepchildren (ages 18 and 16) would not be able to return with you while you fulfill the requirement."

Given the combination of dangerous living conditions for United States citizens in Iran, the difficulty that teenage children would have in adjusting to a markedly different culture, the lack of educational services available to the children, and the limited professional opportunities for [REDACTED] the AAO finds that [REDACTED] and the children will experience exceptional hardship if they live in Iran for two years.

II. Potential Hardship if [REDACTED] and the Children Remain in the United States

Next examined is the potential hardship to [REDACTED] and the children if they stay in the United States while the applicant lives in Iran for two years. In her October 20, 2003 affidavit in support of the waiver application, [REDACTED] describes what her life, and the life of her children, was like before she married the applicant:

I married my first husband, [REDACTED] soon after graduating from high school. I always had concerns about my ex-husband, because his family was well known to have many legal and drug problems. Against my better judgment, I married [REDACTED]. Our problems began soon after marriage—I learned that [REDACTED] was making obscene phone calls to my brother's girl friend. He had difficulty holding a job, and was an alcoholic. Soon after we married, his mother moved into our house, and began selling drugs from our home, in front of our four young children. It was not a good environment for my children to be raised in, and although I complained, [REDACTED] did not listen, so I had no choice but to remove my children from my mother-in-law's influence.

[REDACTED] stated that she and the children moved in with her mother for the next twelve years and that her ex-husband has not seen the children since 1990 and only started to pay child support in 2001 after receiving Social Security Disability benefits. [REDACTED] declared bankruptcy in 2000.

In her December 2004 letter in support of the appeal, [REDACTED] described the difficult time that her children had before she married the applicant. [REDACTED]'s son [REDACTED] developed major depression and had patchy attendance at school. [REDACTED] failed the tenth grade and began seeing [REDACTED] a psychologist, who believed that [REDACTED] was suffering from poor living conditions and the lack of a father figure. After [REDACTED] married the applicant [REDACTED] stopped seeing [REDACTED] because she believed he would be fine now that he had a father figure in his life. [REDACTED] daughters struggled in school and made below average grades. When they were fifteen years old, they were diagnosed with attention deficit disorder (ADD).

[REDACTED] attended a technical school to become a medical assistant, interned at Cooper Hospital, and went to work there fulltime. She met the applicant at Cooper Hospital, where he was working at the time, and they were married in May 2002.

In her December 2004 letter, [REDACTED] stated that the family's life turned around after she married the applicant:

In last [sic] 2 ½ years the kids have turned around completely. [REDACTED] currently has become an honor roll student (from failing classes) and decided to attend college after highschool [sic] graduation and the girls are passing classes with much less difficulty. With my husband's help, the children took several summer school classes in [sic] past 2 years to help them to get caught up to where they should be (which cost \$3400.00). All of these facts including the ADD has also been documented by Dr. Evans who is a well respected forensic psychologist.

In addition to the childrens [sic] turn around, we have made many life changing accomplishments which have improved our quality of life significantly. Most importantly we have moved to a small town with [sic] very low crime rate and purchased a beautiful single family home in an upscale neighborhood. The house includes 5 bedrooms with a finished basement and a large lot that gives us plenty [sic] of space. We also managed to change my old broken car into a brand new SUV, and purchased [REDACTED] a 3 year old Jeep Cherokee; something I never would have been able to afford myself. We have also provided our children the necessities that any kids their age are demanding including 3 computers, a desk for each of them, etc.... Because of my husband's new job, I don't have to work which gives me more time to spend with my children, and strengthen the bonds with them as well as helping them with their school work.

[REDACTED] indicated that she and the family could not survive financially without the applicant:

As it is obvious, there was no way by any mean [sic] to provide all these by myself as a medical assistant. With my husbands [sic] departure, I would have to sell the house, the cars, and basically we will lose everything that we have worked for in the past 2 ½ years. This will have a devastating effect on the kids [sic] hope and confidence in all aspects of life including higher education preparation since this is the most crucial [sic] time in their lives for making decisions on their future. I would also have to work two jobs and would most likely be living with my mother again.

Neither counsel nor the applicant has established that [REDACTED] and the children will experience exceptional financial hardship if the applicant lives in Iran for two years. First, [REDACTED] is an experienced medical assistant who currently does not work. Counsel has not proven that [REDACTED] would be unable to return to work and financially support herself and the family. The record contains no evidence of the amount of family expenses or the salary [REDACTED] would earn as a medical assistant. Second, the record contains no documentation of the applicant's salary or possible assets. The applicant has been a licensed physician in the United States since 1999, and he is board certified in internal medicine and rheumatology. He presumably earns a respectable salary and may have assets that could be used to contribute to the support of his wife and stepchildren while he lives in Iran for two years. Lastly, the AAO notes that the law does not require the family to maintain their current standard of living. Accordingly, counsel has not shown that the potential financial hardship experienced by the applicant and her children would go beyond what is normally expected from a two-year separation.

In her October 20, 2003 affidavit, [REDACTED] stated that contemplating the applicant's departure has caused her to experience chronic depression and anxiety, and that separating the family from the applicant would be emotionally devastating:

With Behnam's help, my children and I have been able to leave behind insecurity, instability, and unsafe living conditions. He has truly saved our lives, and we are so fortunate to be a complete family again. I cannot imagine the tremendous, extreme hardship we would suffer if we are forced to be separated from him. To suddenly lose Behnam, and have to return to the chaotic living situation in an unsafe social environment would be emotionally devastating.

Dr. F. Barton Evans, a psychologist, prepared a *Forensic Psychological Evaluation* of [REDACTED] and the four children [REDACTED] and [REDACTED] dated July 25, 2003. In regard to [REDACTED] Dr. Evans concluded:

She is dependent on Dr. Behnam Khaleghi emotionally and financially and is a high risk for severe psychological difficulties, if she was separated from her husband. Her claim of extreme psychological and social hardship beyond the normal psychological distress of unwanted separation, if [REDACTED] returned to Iran, appears highly believable.

Dr. Evans stated that [REDACTED] suffers from several psychological disorders and is in need of ongoing treatment, and that he has an emotionally healing relationship with the applicant. According to Dr. Evans, separating [REDACTED] from the applicant would severely impair [REDACTED]'s psychological development.

In regard to [REDACTED] and [REDACTED] Dr. Evans concluded that each child had clear indications of learning disabilities, especially ADD, and that each required a comprehensive psycho-educational evaluation and special education services. Dr. Evans stated that the applicant is clearly more aware of the girls' educational difficulties than their mother and will be an essential family resource in having these difficulties addressed in the public schools.

Dr. Evans' July 25, 2003 psychological evaluation does not establish that [REDACTED] will experience exceptional emotional hardship if she stays in the United States while the applicant lives in Iran for two years. First, Dr. Evans based his diagnosis of [REDACTED] on a three-hour interview conducted on January 11, 2003 and on a one-hour interview conducted on June 9, 2003. Both of Dr. Evans' evaluations were prepared at the request of counsel. It does not appear that Dr. Evans has an ongoing, therapeutic relationship with Ms. [REDACTED]. Furthermore, in spite of diagnosing Ms. [REDACTED] with anxiety and depression, Dr. Evans did not treat [REDACTED] nor did he offer a treatment plan or refer her to another mental health professional for treatment. Second, Dr. Evans did not explain what "extreme psychological hardship" is, nor did he indicate that [REDACTED] condition could not be treated. Third, Dr. Evans does not explain how or why the emotional effect on [REDACTED] would go beyond what is normally associated with a two-year separation.

Dr. Evans prepared a second *Forensic Psychological Evaluation* of the children dated May 24, 2004, in which he noted the remarkable progress of [REDACTED] and [REDACTED]

In order to test the conclusions from my previous evaluation, I contacted both Dr. and [REDACTED] to update the results of my evaluation regarding the Ferrer children. I was pleased

to hear their remarkable progress in school, in their social life, and in the case of Michael Ferrer, his mental health status.

Dr. Evans concluded:

It is my professional opinion that [REDACTED] Ferrer, and [REDACTED] [REDACTED] have clearly confirmed, in their vastly improved adjustment and increased mental health, the predictions of the July 25, 2003 independent psychological evaluation. The further they are removed from the life of desperate poverty in which they lived prior to their mother's marriage to Dr. Behnam Khaleghi, the greater has been their improvement. It is also true that, for all four children, these improvements need to continue and that their improved psychological and educational state is still precarious. Should their stepfather Dr. Behnam Khaleghi be required him [sic] to return to Iran for a minimum of two years, they would lose the emotional, educational, and financial support he provides and the family would be forced to return to their terrible life situation before he entered their lives. I can think of nothing more damaging for them to have Dr. Khaleghi return to Iran during these most vulnerable and formative high school years. It is my professional opinion that, while [REDACTED] and [REDACTED] could live in the U.S. separated from Dr. Khaleghi during the imposition of the two-year requirement, they could not do so without experiencing extreme psychological hardship.

Dr. Evans' psychological evaluations do not establish that [REDACTED] or [REDACTED] will experience exceptional emotional, financial or educational hardship if they stay in the United States with their mother while the applicant lives in Iran for two years. First, Dr. Evans concluded that if [REDACTED] and the children are separated from the applicant for two years, "they would be forced to return to their terrible life situation before he entered their lives" and they would be "doomed to return again to Camden, NJ and to the grip of poverty, exposed to most of the high environmental risk factors found by Evans in predicting poor long-term psychological development and decreased life chances." The evidence in the record does not support Dr. Evans' assertion. Dr. Evans stated that the children have made remarkable progress. The applicant is now an integral part of their lives and will continue to be so during and after the two-year separation. Dr. Evans does not explain how this temporary separation will wipe out all of the family's progress and place them in the position they were in before the applicant entered their lives. [REDACTED] first husband, [REDACTED] abandoned her and the children. Clearly, the applicant has no such intention, and if he moves to Iran for two years, [REDACTED] and the children will understand that he is not abandoning them. The AAO notes that Michael (nineteen years old) and the girls (seventeen years old) are presumably mature enough to understand the nature of such a separation. Dr. Evans does not explain how or why the effects would go beyond what is normally expected from a two-year separation.

Second, in preparing the July 25, 2003 evaluation, Dr. Evans interviewed Michael for one hour and each of the girls for 45 minutes. In preparing the May 24, 2004 evaluation, Dr. Evans did not speak to any of the children. Both of these evaluations were prepared at the request of counsel. It does not appear that Dr. Evans has an ongoing clinical relationship with the children. Dr. Evans did not treat the children, nor did he offer a treatment plan or refer them to another mental health professional. These facts raise concerns about Dr. Evans' ability to accurately diagnose or predict the children's psychological condition. The AAO notes that Dr. Evans did not indicate that the children could not be treated for the psychological effects of the separation.

Third, the applicant and [REDACTED] specifically told Dr. Evans not to tell the children about the possibility of staying in the United States while their stepfather lived in Iran for two years. In other words, Dr. Evans predicted the psychological effect on the children of a two-year separation from their father without discussing the matter with the children, who are presumably old enough to discuss their feelings on the matter. This fact raises further questions about the accuracy of Dr. Evans' diagnosis.

Fourth, as indicated above, counsel has not established that [REDACTED] will be unable to support her family while the applicant lives in Iran for two years. The evidence in the record does not support Dr. Evans' assertion that the family will be doomed to a life of poverty.

Fifth, Dr. Evans indicated that the public schools failed to determine that [REDACTED] and [REDACTED] suffered from ADD and learning disabilities. The AAO notes that now that these conditions have been identified, the public school system can deal with them. Dr. Evans did not indicate that the girls' current school is unable to meet their specific learning needs.

Sixth, the record does not support Dr. Evans' contention that the applicant is clearly more aware of the girls' educational difficulties than their mother. The fact that the applicant paid for the girls to attend special programs does not establish that he was more aware of their needs than the children's mother. In her December 2004 letter, [REDACTED] demonstrated a very specific knowledge of the educational needs of all her children.

III. Conclusion

The AAO finds that the evidence in the record establishes that the applicant's wife and stepchildren would experience exceptional hardship if they live in Iran with the applicant for two years. The AAO also finds that the evidence in the record fails to establish that the applicant's wife and stepchildren would experience exceptional hardship if they remained in the United States while the applicant returned temporarily to Iran.

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 her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.