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[REDACTED]

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER Date:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Director, Vermont 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 Waiver Review Division (WRD).

The record reflects that the applicant is a native of Pakistan. He was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on June 17, 1999 to pursue graduate medical training. 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's wife is a Pakistani citizen, and that they have two United States Citizen children, [REDACTED] (born June 20, 2001) and [REDACTED] (born May 16, 2003). The applicant seeks a waiver of his two-year residence requirement in Pakistan, based on the claim that his two children would suffer exceptional hardship if they accompany him to Pakistan.

The Director found that the evidence failed to establish that the applicant's departure from the United States would impose exceptional hardship upon his children. The application was denied accordingly. *Decision of the Acting Director*, Vermont Service Center, Saint Albans, Vermont, dated December 17, 2003.

On appeal, counsel contends that the applicant's United States citizen children, particularly [REDACTED] will experience exceptional hardship if the family moves to Pakistan. In support of the appeal, counsel submitted a brief; *Matter of Mansour*, A Board of Immigration Appeals case; an April 17, 2003 United States Department of State Travel Warning for Pakistan; various articles concerning the danger of living in Pakistan, particularly for physicians; a letter from a United States citizen living in Pakistan; a letter from the applicant's brother; and medical/psychological records for [REDACTED]. 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(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 *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.)

At the outset, the AAO notes that the applicant and his wife have two United States citizen children, ages 3 and 1. The applicant's wife is a citizen of Pakistan and does not have legal status in the United States. If the applicant's waiver is denied, the entire family will have to move to Pakistan.

Accordingly, this decision only addresses the potential hardship that the United States citizen children will experience in Pakistan.

Counsel maintains that [REDACTED] will experience extreme hardship in Pakistan because she suffers from speech delay and separation anxiety, severe conditions that are not found in most children [REDACTED] was evaluated twice for speech delay, i.e. difficulty in learning to talk. Theracare in New Rochelle, New York performed the first evaluation on April 10, 2003. [REDACTED] MA, CC-SLP prepared a report which concluded that [REDACTED] aged 1.9 years, had speech abilities equivalent to a 1 year-old, placing her in the bottom 4-6th percentile for her age. Speech and language therapy were recommended.

A psychologist, [REDACTED] prepared a report on Fatima dated April 21, 2003. [REDACTED] stated that an illness that [REDACTED] in Pakistan during a visit when she was 7 months old might have caused her language disabilities. [REDACTED] seizures and a high fever that resulted in a traumatic hospitalization.

Saint Vincent's Catholic Medical Centers in Staten Island, New York performed a second speech and language evaluation on [REDACTED] dated November 18, 2003. Speech-Language Pathologist Naomi Eichorn, MS, CCC-SLP, stated in her report that [REDACTED] scored more than 2 standard deviations below the mean for her age level, indicating severe delay in auditory comprehension skills," and that [REDACTED] expressive standard score likewise fell more than 2 standard deviations below the mean for her age, indicating severe delay in expressive language abilities."

[REDACTED] prepared a second psychological report on [REDACTED] dated November 25, 2003. [REDACTED] diagnosed [REDACTED] with Mixed Receptive-Expressive Language Disorder (315.31 Diagnostic and Statistical Manual of Mental Disorders IV), the essential feature of which is impairment in receptive and expressive language, and stated:

It is possible [REDACTED] language disabilities were acquired as a result of the seizures and high fever she had when she was an infant and that the trauma she suffered at that time affected the speech area of her brain, leaving her with a language disorder that was only observed when [REDACTED] should have but failed to develop language skills appropriate to her age. However, if recognized at a young age, this kind of trauma is treatable. It is possible for a child's brain, which is remarkably flexible, to transfer the functions of one part of the brain to another part. The younger a child is when this kind of substitution is made, the easier it is to make a transition.

[REDACTED] concluded: "it is essential that [REDACTED] remain in her present environment, that speech therapy be initiated, that her progress be monitored closely and that if little or no progress is made that she attend a therapeutic nursery school." [REDACTED] stated that a move to Pakistan "will put [REDACTED] eventual mastery of language into serious jeopardy."

[REDACTED] diagnosed Fatima with Separation Anxiety Disorder (309.21 Diagnostic and Statistical Manual of Mental Disorders IV). Dr. Frisch described the disorder in her November 25, 2003 report:

Children with this disorder often have great difficulty separating from the person they experience as giving them the most security and safety by their presence [REDACTED] case, that is clearly her mother. Her father is the only other person that she willingly relates to. Children with this disorder also become extremely anxious if they have to leave the security of their home. It is difficult for them if their family moves to a different house, even if it's only on the next block. It is far more difficult when they have to move to a different country with its different culture and customs.

[REDACTED] like many children with Separation Anxiety Disorder, experiences excessive distress when she is separated from her home. Moving to Staten Island required a major readjustment for [REDACTED] despite the fact that the family moved to an environment that was similar to what she had been accustomed to. It would be disastrous to her overall sense of well being if she had to move to a strange country where the customs, culture and language are so different from what they are in the United States. Her inability to adjust to her new surroundings could have profound negative and psychological repercussions and could lead to depression and severe withdrawal.

The AAO finds that [REDACTED] combination of health conditions would cause her to experience exceptional hardship if the family moves to Pakistan for two years. [REDACTED] severe delay in auditory comprehension skills and severe delay in expressive language abilities are serious developmental conditions that require proper treatment. Such treatment is readily available in the United States but may not be available in Pakistan. [REDACTED] anxiety makes a move to Pakistan even riskier. The anxiety resulting from a move to Pakistan could make it more difficult to treat her language delay problem, as well as placing her at risk of psychological damage.

Accordingly, the AAO finds that the evidence in the record establishes that [REDACTED] will suffer exceptional hardship in Pakistan during the two years the applicant is required to live there.

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 Director, U.S. Department of State WRD. Accordingly, this matter will be remanded to the Director so that he may request a United States Department of State WRD recommendation under 22 C.F.R. § 41.63. If the United States Department of State WRD recommends that the application be approved, the application must be approved. If, however, the United States Department of State WRD recommends that the application not be approved, the application will be re-denied with no appeal.

ORDER: The record of proceeding is remanded to the Director for further action consistent with this decision.