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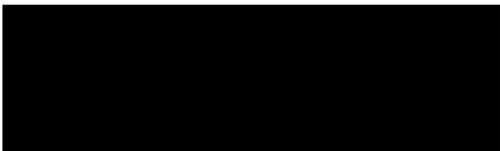
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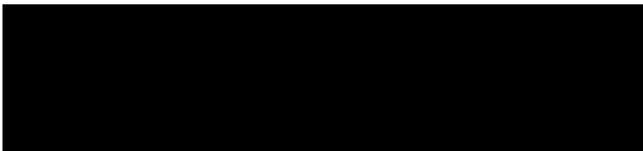
Office: MIAMI (TAMPA), FL Date: **NOV 01 2006**

IN RE:



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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Miami, Florida, 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 Turkey who 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 the exchange visitor skills list. The applicant was admitted to the United States in J1 nonimmigrant exchange status on January 21, 2001. The applicant has a U.S. citizen spouse. She presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to her spouse.

The acting district director determined that the applicant failed to establish her spouse would experience exceptional hardship if she fulfilled her two-year foreign residence requirement in Turkey. *Acting District Director's Decision*, dated May 3, 2006. The application was denied accordingly.

On appeal, counsel asserts that the acting district director did not accord sufficient weight and consideration to the facts with regard to the issue of exceptional hardship. *Attachment to Form I-290B*, at 1, undated.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement and affidavit, the applicant's statement, an x-ray report for the applicant's spouse and information on Turkey. The entire record was considered in rendering this decision.

Section 212(e) of the Act states in pertinent part that:

- (e) 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 [now the Director, U.S. Department of State, Waiver Review Division (WRD), "Director"] 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 AAO notes counsel's contention regarding the acting district director's use of the term "after-acquired entities". *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9<sup>th</sup> Cir. 1980) is cited in the acting district director's decision and the case refers to post-deportation equities which are given decreased weight. As the applicant is not in removal proceedings, *Carnalla-Munoz v. INS* does not apply to her.

The first step required to obtain a waiver is to demonstrate that the applicant's spouse would experience exceptional hardship upon relocation to Turkey for two years. Counsel states that the acting district director fails to consider that the applicant's spouse's lack of education and physical limitations limit his ability to confront the language barrier, depressed employment conditions and other negative factors in Turkey, and it would be extremely difficult for him to support himself in Turkey. *Brief in Support of Appeal*, at 3. The applicant's spouse states that he withdrew from school after ninth grade and he is working as a cook. *Applicant's Spouse's Affidavit*, at 1, dated June 28, 2006. The applicant's spouse states that he does not know the language and this would hinder finding employment. *Applicant's Spouse's Statement*, undated.

Counsel states that the applicant's spouse is in need of future medical care and he cannot afford health insurance in Turkey. *Brief in Support of Appeal*, at 3. The record reflects that the applicant's spouse has a hip deformation, a steel rod in his left femur and several spinal dislocations. *See X-Ray Report for the Applicant's Spouse*, dated March 3, 2004. Counsel states that the applicant's spouse is about to receive health insurance from his employer and he would lose this coverage which is needed for major back and hip replacement surgery. *Brief in Support of Appeal*, at 4.

The record includes articles related to security concerns in Turkey for U.S. citizens. Counsel asserts that the applicant and her spouse would be subject to scorn, humiliation and rejection by the applicant's family and Turkish Muslim society based on the applicant's marriage to a Christian. *Id.* at 6. The applicant states that her family will not support her because she married a Christian man. *Applicant's Statement*, undated. Considering the language, economic, medical, security and social issues in this case, the AAO finds that the applicant's spouse would suffer exceptional hardship upon relocation to Turkey.

The second step required to obtain a waiver is to demonstrate that the applicant's spouse would suffer exceptional hardship upon remaining in the United States during the two-year period. Counsel states that the applicant frequently assists her spouse with personal issues as he is unable to care for himself. *Brief in Support of Appeal*, at 1-2. However, the applicant's spouse states that he has been working for over eight years in restaurants and he currently works as a cook. *Statement of the Applicant's Spouse*, at 1, dated June 28, 2006. The applicant's spouse states that he is working at a reduced level of activity as outlined in previously submitted medical reports. *Id.* The AAO notes that there are no medical reports in the record which state that he is required to work at a reduced level of activity due to his medical problems.

Counsel states that the applicant's spouse's age, education, work experience and physical limitations have had a dramatic effect on his ability to earn income and maintain sufficient employment to support himself. *Brief in Support of Appeal*, at 2. Although sympathetic to the applicant's spouse's situation, separation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. The record does not include substantiating evidence that he will be unable to financially support himself and/or that he will face uncommon emotional, logistical or medical hardships during the two-year period. Counsel states that the applicant will find it difficult to obtain employment based on circumstances related to her marriage to a Christian and therefore, the applicant's spouse will be financially responsible for her. *Id.* at 7. The AAO notes that there is no evidence that the applicant will be unable to financially support herself in Turkey, thus making her spouse financially responsible for her. Based on the record, the AAO finds that the applicant has failed to demonstrate that her spouse would suffer exceptional hardship upon remaining in the United States for the two-year period.

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 two-year period.

**ORDER:** The appeal is dismissed.