

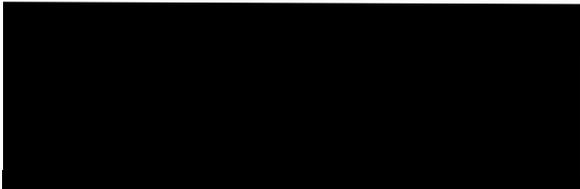


U.S. Citizenship
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Services

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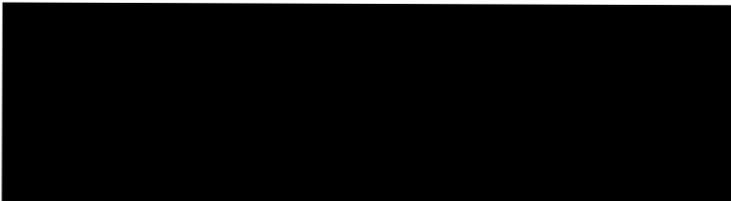
Date: MAY 11 2007

IN RE:

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:



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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the matter will be remanded to the acting 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 citizen of Egypt 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). The applicant was last admitted to the United States in J-1 nonimmigrant exchange status on February 1, 1994. The applicant's daughter is a U.S. citizen and the applicant seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to his daughter.

The director determined that the applicant failed to establish that a qualifying relative would experience exceptional hardship if the applicant fulfilled the two-year foreign residence requirement in Egypt. *See Director's Decision*, dated November 14, 2006. The application was denied accordingly.

On appeal, counsel asserts that the applicant clearly demonstrated that fulfillment of the foreign residency requirement would impose exceptional hardship on his U.S. citizen child. *Form I-290B*, received December 7, 2005.

The record includes, but is not limited to, counsel's brief, reports related to the applicant's son's medical problems, letters of support, material concerning autism and information on conditions in Egypt. 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 (ii), 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 demonstrate that a qualifying relative would suffer exceptional hardship upon relocation to Egypt for two years. Counsel states that if the applicant's family moves to Egypt,

his daughter's life would be threatened by her severely autistic nineteen year-old brother. *Brief in Support of Appeal*, at 12, dated December 29, 2006. Counsel states that applicant's son has been diagnosed with severe autism, retardation, communication disorder and mood disorder. *Id.* at 4. The applicant's son has been hospitalized three times at a psychiatric unit, and he has a history of self-abuse and biting and punching others. *Letter to Magistrate of the District Court from Department of Social Services, Larimer County*, at 2, dated August 25, 1997. The record reflects that the applicant's son has exhibited violent behavior towards school staff and fellow students in the past. *Psychological Evaluation*, at 2-4, dated May 16, 2003. The record reflects that the applicant's son has previously bitten and slapped the applicant's daughter. *Id.* at 3. The applicant states that his son stays with his family from Saturday evening until Sunday morning and he must be present at all times with his son. *Applicant's Statement*, at 1, undated. The applicant states that in Egypt, he will not be able to stay with his son at home all of the time as he will need to work. *Id.* If the applicant's son was returned to his family on a full-time basis, he would become violent and put the applicant's daughter at risk. *Psychological Evaluation*, at 4. The record includes a letter from a lecturer of pediatrics at Cairo University Hospitals who states that the applicant's son would have to live with his family in Egypt as there would be no residential treatment available to him. *Letter from [REDACTED]* undated. Counsel states that the applicant would have to give up the privately funded out-of-home foster care that has been provided to his son. *Brief in Support of Appeal*, at 15. Based on the aforementioned evidence, the record establishes that concerns for the applicant's daughter's safety are plausible.

Counsel states that the applicant's daughter has never been to Egypt and she speaks virtually no Arabic. *Brief in Support of Appeal*, at 9. Counsel states that the applicant's daughter is integrated in her school and community, she has demonstrated academic success, and the applicant will not be able to afford a school where English is spoken due to tuition expenses of \$2,000-\$3,000 per month. *Id.* 19. The AAO notes that the record does not include substantiating evidence of the inability of the applicant to afford an English-speaking school. However, the AAO acknowledges the difficulties that the applicant's daughter would face due to language issues and her integration into the American lifestyle.

In addition, counsel states that it will be difficult for the applicant's daughter to make friends in Egypt due to discrimination against persons with disabilities. *Id.* at 17. The applicant states that there is a great deal of prejudice against families with mentally ill family members, a statement that is supported by the lecturer in pediatrics at Cairo University Hospitals. *Applicant's Statement*, at 1, *Letter from [REDACTED]*

Based on the totality of the evidence, the AAO finds that the applicant has established that his daughter would suffer exceptional hardship upon relocation to Egypt.

The second step required to obtain a waiver is to demonstrate that the applicant's daughter would suffer exceptional hardship if she remained in the United States during the two-year period. As the applicant's spouse's legal status is based on the applicant's legal status, both of them would have to return to Egypt. This would leave their eight-year old daughter in the United States without her parents. By default, this situation would constitute exceptional hardship to their daughter if 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 met his burden. The AAO notes, however, that a waiver under section 212(e) of the Act may not be approved without the favorable recommendation of the WRD. Accordingly, this matter will be remanded to the acting director so that he may request a WRD recommendation under 22 C.F.R. § 514. If the WRD 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 WRD recommends that the application not be approved, the application will be re-denied with no appeal.

ORDER: The appeal is sustained and the record of proceeding is remanded to the director for further action consistent with this decision.