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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: OCT 18 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:

SELF-REPRESENTED

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 Director, Vermont 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 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 Uzbekistan 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 admitted to the United States in J1 nonimmigrant exchange status on August 2, 2003. The applicant's spouse and child are U.S. citizens. The applicant presently seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to her spouse and child.

The director determined that the applicant failed to establish that a qualifying relative would experience exceptional hardship if she fulfilled the two-year foreign residence requirement in Uzbekistan. *Director's Decision*, dated January 19, 2007. The application was denied accordingly

On appeal, the applicant asserts that her return to Uzbekistan will cause exceptional medical and psychological hardship to her family. *Form I-290B*, received February 20, 2007.

The record includes, but is not limited to, the applicant's statements, the applicant's medical records, information on breastfeeding and country conditions information on Uzbekistan. 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, Department of Homeland Security (DHS), "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. (Quotations and citations omitted).

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 exceptional hardship would be imposed on a qualifying relative upon relocation to Uzbekistan for two years. The applicant states that she has undergone two intracranial surgeries, medical care is not available in Uzbekistan and the lack of care could cause a serious threat to her medical condition. *Brief in Support of Appeal*, at 3, dated February 16, 2007. The AAO notes the medical records related to the applicant's surgeries from September 2004 and January 2005. In addition, medical care in Uzbekistan is below Western standards and there is a severe shortage of medical supplies. *Consular Information Sheet*, at 3, dated October 13, 2006. The applicant states that her spouse, as one of the few Americans in the country, would be a potential target for terrorist and extremist groups. *Brief in Support of Appeal*, at 3. The applicant also states that her child may be a target for terrorist groups. *Id.* The record reflects that the potential for a terrorist attack exists and Americans in Uzbekistan are urged to exercise extreme caution. *U.S. Department of State, Travel Warning*, at 1, dated October 4, 2006. The record also reflects that it is difficult for U.S. citizens to obtain visas for Uzbekistan and the visas are often valid for a single entry of limited duration. *Id.*

The applicant states that her daughter needs to receive periodic vaccinations and checkups from certified doctors, vaccinations made in Uzbekistan have not been approved in the United States, the combinations of vaccines used for infants in the United States is different than from that of Uzbekistan, and changing to Uzbek combinations may cause serious health problems or irreversible results. *Brief in Support of Appeal*, at 4. The applicant states that her daughter would be subject to third world facilities and substandard medical standards. *Id.* The record reflects that medical care is below Western standards and there are severe shortages of medical supplies. *U.S. Department of State, Consular Information Sheet on Uzbekistan*, at 3, dated October 13, 2006.

The applicant states that Uzbekistan does not have any local companies or government agencies that can pay adequate or living salaries. *I-612 Cover Letter*, at 1, dated June 26, 2005. The applicant states that nearly all well-paid positions are offered by foreign organizations and companies, but due to political and social unrest these organizations have been leaving Uzbekistan. *Id.* at 1-2. The record includes articles related to the suspension of the Peace Corps program and the closure of the Soros Foundation in Uzbekistan. The applicant states that the few remaining positions require extensive experience and a minimum of a master's degree, her spouse only has an undergraduate degree, lower paid positions are saved primarily for Uzbek citizens, she would be lucky to find a job paying \$50 per month and this sum would not be enough for them. *Id.* at 2. The AAO notes that several of the applicant's claims are not substantiated with supporting documentation. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

However, based on the totality of the record, the AAO finds that exceptional hardship would be imposed on the applicant's spouse and child upon relocation to Uzbekistan for two years.

The second step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship by remaining in the United States during the two-year period. The applicant states that her daughter would be left without a mother who has an irreplaceable role in raising a contributing member of society. *Brief in Support of Appeal*, at 2. The applicant discusses the benefits of breastfeeding and states that separation could cause damage to the health of her daughter. *Id.* The record includes information on the health benefits of breastfeeding.

The applicant states that leaving her spouse would cause exceptional psychological problems for him, they would have limited contact and he would not have control of medical emergencies that could arise with her. *Id.* at 2-3. The applicant states that her spouse would have no way to support her and their daughter if they both went to Uzbekistan, and the separation and psychological turmoil would be too much to take. *Id.* The applicant states that she and her spouse have grown especially close since her surgery and she details her closeness to her spouse. *Applicant's Statement*, at 2, dated September 19, 2005. The applicant states that her spouse would only be able to go to school if she were there to provide help for it and he would have to postpone his schooling until she returned. *Id.* at 3.

The AAO notes that based on the insecure conditions for U.S. citizens in Uzbekistan and the difficulty in obtaining visas, the applicant's spouse and infant daughter would potentially be separated from the applicant for the entire two-year period, an especially significant emotional hardship for a child in the first years of life. The AAO also finds that the applicant's return to a country without the medical infrastructure to manage her particularly serious and complex ongoing and potential health care needs would result in emotional hardship for her spouse throughout the length of her stay. In addition, the applicant's spouse and daughter would experience the common problems associated with separation as discussed in this decision. Considering all of these points, the record reflects that exceptional hardship would be imposed on the applicant's spouse and child during 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 met her 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 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.