



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

43

FILE:

Office: VERMONT SERVICE CENTER

Date:

AUG 12 2008

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Center Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Center Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State (DOS), Waiver Review Division (WRD).

The record reflects that the applicant, a native and citizen of Lebanon, was admitted to the United States as a J-1 exchange visitor in June 2000 to participate in graduate medical training. He is thus 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 presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen spouse and child, born in August 2007, would suffer exceptional hardship if they relocated to Lebanon temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Lebanon.

The center director determined that the applicant failed to establish that a qualifying relative would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Lebanon. *Center Director's Decision*, dated October 16, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides the following: a brief, dated November 19, 2007; a copy of the applicant's child's U.S. birth certificate; a letter from the applicant's child's pediatrician; letters from the applicant's spouse's mother and sister; monthly budget estimates for the applicant and his family; information about costs associated with child care; and copies of bills relating to the applicant and his family. The entire record was reviewed and 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 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 first step required to obtain a waiver is to establish that the applicant’s U.S. citizen spouse and/or child would experience exceptional hardship if they resided in Lebanon for two years with the applicant. To support this contention, the applicant states the following:

...My U.S. citizen spouse would suffer exceptional hardship if we were both to move to Lebanon. Lebanon is not a safe place for Lebanese Christians such as myself because, as a minority, we are under constant danger of persecution. Lebanon is also not safe for native Lebanese because of criminal violence, terrorism, and political instability; it is far less safe for visiting Westerners. The anti-American sentiment prevalent amongst many fundamentalist groups within Lebanon would pose a serious threat to the life of my U.S. citizen wife.¹ Furthermore, my wife would not be able to work in Lebanon because she does not know any of the local languages, nor would she have any real prospects for employment considering the lack of infrastructure within Lebanon following the recent war in Israel....

Anti-American and anti-Western terrorist organizations make it increasingly dangerous for Americans to live in Lebanon. The recent war with Israel and the United States’ backing of Israeli military intervention has exacerbated a very volatile situation that developed after the forced withdrawal of occupying Syrian troops.... Syria is a member of the U.S. State Department’s list of ‘State Sponsors of Terrorism,’ and its support of terrorist organizations that remain in Lebanon poses a serious threat to the safety of American citizens in this country....

The United States Department of State Bureau of Consular Affairs, on July 27, 2006, issued a travel statement counseling American citizens to avoid travel to Lebanon. It has even ordered the departure of family members and non-essential American employees from Lebanon. My wife, because of her religion and because of her nationality, would not only face discrimination and derision if she moved to Lebanon, she would also face potential bodily harm as an American Catholic target.

A fragile cease-fire has currently been established, but Lebanon is now plagued with a whole new set of difficulties. Mines, shells, bombs, and cluster bomblets now lie rampant throughout southern Lebanon; they hang from trees, eaves, and

¹ Subsequent to the Form I-612 submission, the applicant and his spouse had a child, born on August 1, 2007 in the United States. As such, although some statements in the record only reference exceptional hardship to the applicant’s U.S. citizen spouse, the AAO is cognizant of the fact that there is another qualifying relative to be considered in the instant appeal, a U.S. citizen child.

refrigerator doors, and lurk under rubble. Civilians who have returned to their homes are paralyzed by the fear that anywhere they walk or anything they pick up might detonate and kill them instantly. Unfortunately, this danger is not likely to disappear anytime soon.... I am very concerned for my wife's safety in such a worn-torn region. The Israeli-Lebanese conflict has left us to try to navigate an environment that is filled with potential explosives, making it so neither my wife nor I would be traveling through Lebanon. In fact, my brother-in-law lost his leg in exactly this way, when he accidentally stepped on hidden explosives during the early 1990's. My wife would live in constant fear for herself and for me, and this would surely cause an exceptional hardship to her.

Weeks of conflict within Lebanon, without any access to the outside world, triggered a refugee crisis, worsening hygienic conditions and water and fuel shortages. These factors have combined to make the region prime for major infectious disease outbreaks.... I fear that my wife, who never lived in Lebanon, would contract an infectious disease in Lebanon. The infectious diseases are already a danger to those who did grow up in Lebanon, but for those like my wife who have not developed immunity to any of these diseases, there is an even greater risk.

Discrimination against women is still deeply rooted in the Lebanese culture, which is also prevalent throughout Arab society. Both male and female patients prefer a male physician due to the generalized belief that female doctors are not as competent as male ones. My wife is an emergency medicine physician trained in the United States; however, due to the discrimination against women, it is probable that she will not find available economic opportunities. In fact, Lebanon does not even recognize an emergency medicine specialty so this makes it even more unlikely that she will be able to continue practicing medicine. Moreover, because my wife does not speak Lebanese, she will certainly have extreme difficulty in finding any kind of employment. The consequences of this will be reflected in a lower income for my family, as I will be the family's only provider....

Christian Lebanese citizens have not only been caught in the middle of the Israeli-Muslim conflict, but they have also suffered from being direct Islamic targets as well....

...An example of violence perpetrated against Christian Minorities in Lebanon is a pain that is all too real in my own family since my uncle was captured by rival Islamic groups and tortured in 1982. Because my family has already been targeted, it is much more likely we will be targeted again. I therefore have a very real fear that my wife will be a target as an American and a Christian, which lately, has been equated as the same thing in Lebanon.

By moving to Lebanon, [the applicant's spouse] would leave behind an American mother, father, younger sister and brother. Her mother and father both have hypertension and high cholesterol and her mother also has eye problems. She adjusts their medications and ensures that their blood pressure and cholesterol levels are well controlled. Her brother suffers from asthma and was recently hospitalized for a bleeding ulcer; she also looks after his well being. [REDACTED] would suffer from undue stress and anxiety because she would not be able to monitor her family's various medical conditions while living so far away in Lebanon....

Affidavit of [REDACTED], dated October 17, 2006.

A Travel Warning, issued by the U.S. Department of State, Bureau of Consular Affairs, dated May 30, 2008, states the following, in pertinent part, regarding Lebanon:

This Travel Warning updates information on security threats and ongoing political violence in Lebanon and informs U.S. citizens of current safety and security concerns. The Department of State continues to urge that Americans avoid all travel to Lebanon. Americans who live and work in Lebanon presently should understand that they are accepting risks in remaining and should carefully consider those risks. This supersedes the Travel Warning for Lebanon issued on May 19, 2008.

On May 7, 2008, Hizballah militants blocked the road to Rafiq Hariri International Airport. The action rendered the airport inaccessible and travelers were unable to enter or leave the country via commercial air carriers. Armed Hizballah and other opposition members proceeded to enter areas of Lebanon not traditionally under their control resulting in heavy fighting and a number of casualties. While there is now full access to the airport and widespread hostilities have subsided, the United States is concerned about Hizballah's willingness to use violence to achieve political ends with little or no warning.

The threat of anti-Western terrorist activity exists in Lebanon; groups such as Al-Qaeda and Jund al-Sham are present in the country and have issued statements calling for attacks against Western interests in the past.

Landmines and unexploded ordnance continually pose significant dangers throughout southern Lebanon, particularly south of the Litani River, as well as in areas of the country where civil war fighting was intense. More than a dozen civilians have been killed and over 100 injured by unexploded ordnance following the armed conflict in July-August 2006. Travelers should watch for

posted landmine warnings and strictly avoid all areas where landmines and unexploded ordnance may be present.

Travel Warning, U.S. Department of State, Bureau of Consular Affairs, dated May 30, 2008.

Numerous documents have been provided to support the assertions made by the applicant with respect to Lebanon's problematic political, social and economic conditions and safety concerns for U.S. citizens residing in Lebanon. As such, based on the U.S. Department of State's position on travel by Americans to Lebanon, the social, political and economic turmoil in Lebanon, anti-American sentiment, and the concerns outlined above regarding the language barrier, career disruption, long-term separation from her family members, and complete unfamiliarity with the country and its customs, the AAO concludes that the applicant's U.S. citizen spouse and child would experience exceptional hardship were they to accompany the applicant to Lebanon for a two-year term.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse and/or child would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in Lebanon. As stated by the applicant's spouse,

...Our...child and I will suffer exceptional hardship if [redacted] [the applicant] were required to return to Lebanon for two years. I am very much emotionally attached to my husband. I cannot imagine how I would survive without seeing him or communicating with him regularly, which I won't be able to do if he returns to Lebanon. I also will be left to care for our child by myself, and this is an impossible task for me. As a first-time mother, I already feel overwhelmed with raising a child, and to do so while working rigorous hours with no spouse to help me, is unthinkable. I also cannot stand the thought of [redacted] returning to Lebanon, given the political instability and anti-American sentiment prevalent there. He will be at a higher risk for harassment and targeted violence, and I know he will not be safe there....

I currently work as an attending physician in emergency medicine.... Because I work in emergency medicine, my hours are long and erratic.

Because of my rigorous schooling and subsequent demanding career, I counted on relentless support in my endeavors. With my high level of stress in my current job, I am lucky that [redacted] has been my support system....

Because [redacted] has been my support for the last six years, I can no longer imagine being separated from him, especially as we are about to enter parenthood. My job is so time-consuming and demanding, that I will really need the help of [redacted] in helping me raise our child—I cannot do it alone. He is what keeps me going.

My husband has not visited Lebanon very much since he first came to the US—the country has unfortunately become very, very dangerous. During the violence that occurred in July 2006, I got a real sense of how this violence affects families. I watched and listened as [REDACTED] called his family every other day to make sure they were safe, and we sadly found out that his elderly parents were forced to live without electricity and water. I also came to know that they were trapped in their apartment while bombs went off all around them. They could not sleep and they were filled with anxiety. Worse yet, a friend of [REDACTED] died as he crossed a bridge that was bombed. The reality of living in a war-torn area is so sad and unsafe—no one should be subjected to such an environment.

After that, I found that I could no longer sleep well or concentrate. I was constantly anxious and scared at the thought of [REDACTED] returning to such an environment. I was not taking proper care of myself due to my continuous worrying. In fact, I was hospitalized, at 28 weeks into my pregnancy, for preterm contractions secondary to stress and dehydration. I was just worried so much about what would happen to [REDACTED] if he returned to Lebanon. I was worried I would lose my husband and the father of my child.... He is my partner in life, and he is the father of our...child. I don't know how I will survive without him for two years, and especially, I don't know how I will survive if god-forbid something happens to him due to the constant violence and political instability.

Due to my high level of stress and anxiety of [REDACTED] returning to Lebanon, I was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood. I very strongly feel that [REDACTED], being associated with the US and being a Christian, will surely be targeted for violence in Lebanon. The country is so tense that if he doesn't get hurt through random bombings and violence, then he will get hurt from targeted violence due to living in America for so long and for being a Christian. He will not be safe. Due to my constant anxiety about [REDACTED]'s departure, I know my health has been affected, from increased blood pressure to preterm contractions.... I just know that I will not be able to sleep, eat, work, or function knowing that [REDACTED]'s life will be in jeopardy for every minute of every day for two years....

I also know that our...baby will also suffer if [REDACTED] were to return to Lebanon without us. The baby would be left in childcare for many hours, due to my rigorous schedule, and would not have the benefit of spending extended periods with me or [REDACTED]. This cannot be healthy for any child, to effectively be separated from both parents for the course of two years. If [REDACTED] remained with us, he would ensure he spent time with the baby while I had long hours, and we would find a balance with our schedules, as we always do together. Without [REDACTED]'s help and support, I will not be able to manage everything by myself, while constantly worrying if [REDACTED] is safe.

will have trouble finding a job in Lebanon. With last summer's infrastructure damage, this summer's violence, and the poor economy, he will be lucky to gain any employment in Lebanon. He will most likely be out of work for two years.... This will be stressful for me, as I will have to balance a very busy work schedule, a new child, pay for all of our expenses alone that now [REDACTED] and I share, and pay for childcare in addition to sending money to [REDACTED]. Due to having to care for the baby myself, I will want to look for jobs that have better hours (and thus pay less), but I won't be able to if I am supporting two households.

When [REDACTED] returns to the U.S., he will have lost valuable practice time in his specialty, making it so he will receive a reduced salary in the United States. Again, I will be in a situation that will be bad for my career and for the baby, as I will be forced to make career choices based on [REDACTED]'s reduced salary....

Affidavit of [REDACTED] dated July 3, 2007

Due to the applicant's spouse's fears and anxieties with respect to her spouse's anticipated return to Lebanon, a country of political and social turmoil, the applicant's child's need to be with both his mother and father, the applicant's spouse's and her child's dependence on the applicant for their well being, financial hardship due to the loss of the applicant's income and the need to maintain two households, and the career disruption the applicant's spouse would face, the AAO finds that the applicant's departure for a two-year period would cause the applicant's spouse and child emotional, psychological and financial hardship that would be significantly beyond that normally suffered upon the temporary separation of families.

As such, upon review of the totality of the circumstances in the present case, the AAO finds the evidence in the record establishes that the applicant's U.S. citizen spouse and child would experience exceptional hardship were they to relocate to Lebanon and in the alternative, were they to remain in the United States without the applicant, for the requisite two-year term.

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 DOS. Accordingly, this matter will be remanded to the center director so that he may request a DOS recommendation under 22 C.F.R. § 514. If the DOS 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 DOS recommends that the application not be approved, the application will be re-denied with no appeal.

ORDER: The matter will be remanded to the center director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State, Waiver Review Division.