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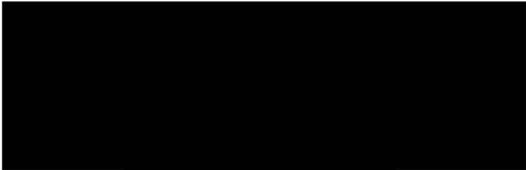
U.S. Department of Homeland Security  
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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: FEB 01 2008

IN RE: [REDACTED]

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 Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. 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 (DOS), Waiver Review Division (WRD).

The record reflects that the applicant is a native and citizen of Syria who obtained J-1 nonimmigrant exchange status on January 7, 1997 to participate in graduate medical education 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 residence requirement, based on the claim that his three U.S. citizen children, twins born in 1999 and a third child born in 2005, would suffer exceptional hardship if they moved to Syria temporarily with the applicant and in the alternative, if they remained in the United States while the applicant and his spouse fulfilled the two-year foreign residence requirement in Syria.<sup>1</sup>

The acting director determined that the applicant failed to establish that his children would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Syria. *Acting Director's Decision*, dated November 13, 2006. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated December 4, 2006; copies of articles written in regard to hardship waivers; a letter from the Office of the General Counsel of the former Immigration and Naturalization Service with respect to J-2 dependents, dated April 4, 1990; documentation to demonstrate that the applicant has obtained French citizenship; a military court order and decision with respect to the applicant, dated May 18, 2006; case law with respect to waivers; and a copy of a decision from the AAO. In addition, on January 11, 2008, counsel provided a letter, dated October 2, 2007, establishing that the applicant's son, [REDACTED] has been diagnosed with Attention Deficit Hyperactivity Disorder [ADHD] and numerous reports and medical records confirming that the applicant's daughter, [REDACTED] has hearing and speech deficits. 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,

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<sup>1</sup> The record indicates that the applicant's spouse, [REDACTED], entered the United States as a J-2 on January 11, 1997, based on her derivative status as a spouse of the applicant, a J-1 visa holder. As such, the applicant's spouse is also subject to the two-year foreign residency requirement. Pursuant to communications received by the AAO from the U.S. Department of State, both the applicant and his spouse are subject to compliance of the two-year foreign residency requirement in Syria, the applicant's home country, despite the fact that the applicant's spouse is a native and citizen of France.

(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 three U.S. citizen children would experience exceptional hardship if they resided in Syria for two years with the applicant. To support this contention, the applicant states the following:

At the end of 2001, I made my first visit to Syria since 1994. The first problem we faced was the two years of compulsory military service, with a salary of \$200 a month, that I had to fulfill if I stayed for more than one month in Syria. The second problem was the lack of American schools in Syria. This was going to compromise [redacted] and [redacted] [the applicant’s children’s] education, since they spoke only English. Also, the medical care in Syria was and still is among the least developed in the Middle East...

...in October 2003, our son [redacted] started to show behavioral problems at school. At the recommendation of his teachers, we took [redacted] to Mercy Health System for evaluation.

[redacted] was found to have signs of sensory integration dysfunction.... [This] is a disorder where the central nervous system is ineffective in processing sensory information. This disorder disrupts how [redacted] functions in everyday life.... If left unrecognized and treated, sensory integration behavior often affects a child’s behavior, development, and ability to properly interact and learn. Syria does not have the specialized medicine that is able to deal with this disorder... Therefore, [redacted]’s condition would become more of a strain on his daily functioning and would affect the family’s development as a whole. After extensive occupational therapy and education in special needs classes, [redacted]’s disorder has become manageable. If the family were forced to relocate to Syria, he would revert to his old behavior.... His previous behavior consisted of disruptive behavior in school, difficulties eating, multiple tantrums a day, violent acts toward his family and teachers, and a learning disability. The United States is the only country in the world that is equipped with special needs classes that Omar needs to help him keep his behavior under control.

Syria is still governed by a totalitarian regime. This is a time of incredible tensions throughout the Middle East, especially with the ongoing war of words between Syria and the United States, the looming threat of United Nations sanctions against Syria due to its role in the assassination of the former Lebanese Prime Minister...in 2005, and the raging war in Iraq on Syria's eastern border that threatens to spill into Syria at any time.

I am Muslim of Arab ethnicity, my wife is a French Christian, and our children are U.S. citizens and have close ties to our community in the United States.... If I return to Syria with my family, my U.S. citizen children could be subjected to a significant risk of violent retaliation by the Syrian regime and its secret service....

In Syria, interfaith marriages are unacceptable. If my Christian wife and U.S. citizen children were to practice Christianity in Syria, radical Muslim extremists would retaliate against them. Our U.S. citizen children would not be able to have the religious exposure and freedom that my wife and I would like them to have. If my wife were harmed because of her religious practices, my children would suffer in many ways, including possibly the loss of their mother. Recently, the Danish and Swedish embassies were burned by Muslim extremists....

Even if my three U.S. citizen children escaped physical harm, they would still suffer exceptional psychological hardships if uprooted from their daily life.... Also, they would face the risk of long-term psychological hardships if either my wife or I were physically harmed or killed. In Syria, our children would be taught anti-American slogans in their school by their teachers.... If our three children were to disagree with these radical ideas and teachings, they would be discriminated against....

If we returned to Syria with our children, they would also face serious medical hardships due to the high child mortality and morbidity rates, the increased risk of infectious disease, poor environmental conditions, and a comparatively inferior medical infrastructure....

██████████ and ██████████ do not speak Arabic. They know nothing of the Syrian society and culture....

██████████ and ██████████ are used to the school system in the United States. Adjusting to the school system in Syria would be a traumatic psychological shock for them. The classrooms in Syria are extremely crowded. They are often filled with 40 to 50 children per class.... My U.S. citizen children would be behind once they started school, since they have no knowledge base of any of the Arabic teachings....

If I were forced to relocate to Syria with my family, we would also suffer extreme financial hardships. It is possible that I would have to serve a compulsory military service in the Syrian army for two years...this would not only be an emotional strain on my family but a financial one also. I would earn between \$100 to \$200 per month.... It would be impossible to raise a family and have the minimal basic life necessities with a salary like this.... My

military service would increase my risk for injury or death, which would leave my children without a father. My involvement with my children would be decreased tremendously, because I would only be allowed to go home once a month....

*Affidavit of [REDACTED] dated May 15, 2006.*

Counsel provides numerous documents to support the assertions made by the applicant. To begin, a letter and translation is provided from the Syrian Arab Republic Central Command of the Armed Forces, Military Court Section, stating that "...according to military law number 56, you [the applicant] are guilty of delay presenting yourself for military service, the court ordered a 6 months jail sentence...." *Letter from the Syrian Arab Republic Central Command of the Armed Forces, Military Court Section, dated May 18, 2006.*

In addition, counsel has provided evidence of [REDACTED]'s Sensory Integration Dysfunction, and numerous articles that explain the disorder. Moreover, counsel has provided documentation that confirms that Omar has begun speech/language therapy as of April 2006, and has been granted numerous classroom accommodations to increase scholastic performance. *Bay Park Community Hospital Pediatric Speech/Language Pathology Evaluation, dated April 18, 2006.* Finally, counsel documents that Omar is suffering from ADHD. *Letter from [REDACTED], Clinical Psychologist, dated October 2, 2007.*

Also, in a follow-up letter provided by counsel, it has been documented, through reports and medical records, that the applicant's daughter, [REDACTED], has hearing and speech deficits and has been accepted into Ohio's early intervention program and has been recommended for speech therapy. *Help Me Grow Developmental Evaluation, dated December 3, 2007 and Ohio's Department of Health Individualized Family Service Plan, dated December 17, 2007.*

Counsel has provided numerous articles about country conditions in Syria, and the AAO notes that an updated Travel Warning was issued on September 18, 2007 with respect to Syria. As stated by the Bureau of Consular Affairs, U.S. Department of State,

This Travel Warning alerts U.S. citizens to the ongoing safety and security concerns in Syria. Travelers are advised to thoroughly consider the risks before travel to Syria and to take adequate precautions to ensure their safety if traveling to Syria. This supersedes the Travel Warning issued on November 13, 2006.

On September 12, 2006, the U.S. Embassy in Damascus was attacked by assailants using improvised explosives, gunfire, and two vehicles laden with explosives. This attack underscores the danger posed by the continued presence of terrorist groups in Syria. The Embassy is working with the Syrian authorities to address these threats and the security issues raised by the attack on the Embassy. While the authorities have taken measures since then to crack down on local extremists, self-contained groups with no links to external terrorist organizations will remain inherently difficult to detect and disrupt....

*Travel Warning-Syria, Bureau of Consular Affairs, U.S. Department of State, dated September 18, 2007.*

Based on the documentation provided, the AAO finds that the hardship the applicant's children would encounter were they to relocate to Syria for a two-year period goes significantly beyond that normally suffered upon the temporary relocation of families based on a two-year home residency requirement. The record indicates that the applicant's children are integrated into the U.S. lifestyle and educational system. They have never lived outside the United States and they would not be able to speak, read or write in the native language. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development, bearing in mind that [REDACTED] and [REDACTED] have been diagnosed with a number of medical, psychological and/or scholastic issues that require professional attention and therapy, as documented in the file, and relocate them to Syria would be a significant disruption that would constitute exceptional hardship.

Moreover, were the applicant to return to Syria, the record indicates that he would be imprisoned for a six-month period. His children would be forced to live in a country to which they have no connection, without their father for six months, and with a mother who is not a national of Syria, nor is she Muslim. In addition, the children would be exposed to political and religious turmoil in Syria, and would be constantly concerned for their own security. The AAO thus concludes that the applicant's U.S. citizen children would experience exceptional hardship were they to accompany the applicant to Syria for a two-year term.

The second step required to obtain a waiver is to establish that the applicant's three U.S. citizen children would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in Syria. The applicant asserts that it would be impossible for the applicant's children to remain in the United States for two years while the applicant returned to Syria because no one would be available to care for his children. As stated by the applicant,

I am subject to the J-1 two-year foreign residence requirement because of my medical training in the United States in J-1 status...My wife is also derivatively subject to the foreign resident requirement, because she was in J-2 status.

*Affidavit of T* [REDACTED] dated May 15, 2006.

As the record indicates, both the applicant and his wife are J visa holders subject to the two-year foreign residency requirement. As such, the AAO concurs with counsel that the foreign residency requirement that both the applicant and his spouse must comply with would leave their young children in the United States without their parents. Clearly, this situation would constitute exceptional hardship to the applicant's children if they remained in the United States.

The AAO finds that the applicant has established that his children would experience exceptional hardship were they to relocate to Syria and in the alternative, were they to remain in the United States without the applicant, for the requisite two-year term. As such, upon review of the totality of circumstances in the present

case, the AAO finds the evidence in the record establishes the hardship the applicant's children would suffer if the applicant temporarily departed the U.S. for two years would go significantly beyond that normally suffered upon the temporary separation of families.

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 acting 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 application must be approved. If, however, 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 acting director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State, Waiver Review Division.