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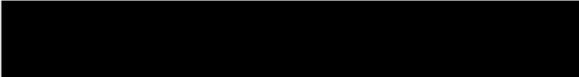
FILE:



Office: CALIFORNIA SERVICE CENTER

Date: FEB 07 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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the 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 Cameroon who obtained J-1 nonimmigrant exchange status on February 18, 1992 to participate in a program funded by the United States Agency for International Development. She 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 her two-year residence requirement, based on the claim that her U.S. citizen spouse and four children, born in 1992, 1993, 1998 and 2000, would suffer exceptional hardship if they moved to Cameroon temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Cameroon.

The director determined that the applicant failed to establish that her spouse and four children would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Cameroon. *Director's Decision*, dated July 2, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated July 31, 2007; a copy of the applicant's V-1 approval notice, issued May 27, 2003; a letter from [REDACTED] Child and Adolescent Psychiatrist, dated July 31, 2007; articles regarding the risks of antidepressant medication use among children and adolescents; information about country conditions in Cameroon; documentation and articles regarding the applicant's spouse's medical condition, namely obstructive sleep apnea; and a copy of a certificate issued to the applicant's daughter, confirming her acceptance into Illinois Mathematics and Science Academy, with accompany documentation of the costs to attend said facility. The entire record was reviewed and 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, 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 children would experience exceptional hardship if they resided in Cameroon for two years with the applicant. To support this contention, the applicant states the following:

...First, my family would face severe financial hardship if we moved to Cameroon together.... Given the high unemployment rates in Cameroon, we would have an extremely difficult time procuring employment there.... Moreover, as a U.S. citizen, [REDACTED] would not be eligible to work for any branch of the Cameroonian government, and could only work in Cameroon if he secured employment before leaving the United States, and applied for a visa based on a contract offered by an employer in Cameroon....

...Currentl [REDACTED] holds a respected position for the State of Illinois.... My husband would...suffer tremendously if he interrupted his career to relocate to Cameroon.... Because he would not be able to continue his career in Cameroon, [REDACTED] marketable skills would be severely outdated upon our return in two years....

My family also cannot relocate to Cameroon for health reasons. My two daughters, [REDACTED] and [REDACTED] suffer from Sickle Cell Trait, a condition which could have serious effects on their ability to live a normal, healthy life in Cameroon.... Sickle Cell Trait has been associated with several clinical conditions, including hyposthenuria, and hematuria. In addition, a recent study showed an increased risk of sudden death for people with sickle cell trait following extreme exertion.

[REDACTED] also suffers from a serious, and potentially life threatening peanut allergy. She was diagnosed at the age of three by her doctor. Her symptoms includes hives, itching and swelling of the lips, tongue or mouth, throat tightening (vomiting) on exposure, with life-threatening shortness of breath and sometimes a drop in blood pressure that triggers her anemia. Contact with peanut products could prove to be fatal for my daughter....

...Peanuts, also known as groundnuts, are a major food product in Cameroon. Groundnut is grown in all the ecological regions of the Cameroon and is the main ingredient and a common additive to all foodstuffs in Cameroon....

Taking [REDACTED] to Cameroon will certainly expose her to peanut allergens and gravely endanger her life. The government of Cameroon has not instituted a policy requiring the labeling of food products, and offers no regulations in terms of the product labels that do exist.... Furthermore, doctors and hospitals often expect immediate cash payment for health care services. Here in the United States, we have health insurance which covers our health care costs. If [REDACTED] and I were unable to procure employment in Cameroon, we would be unable to cover the cost of emergency care for her. Without cash to pay doctors and hospitals at the time of treatment, emergency services would not be available to [REDACTED]

We could not relocate to Cameroon as a family because the educational development of my children would suffer in Cameroon.... My oldest daughter, [REDACTED] is extremely gifted academically. She excels in all areas, especially math and science. She also participates in tennis, basketball, and plays clarinet and piano....

[REDACTED] my oldest son...excels academically, socially, and in extra-curricular activities such as band, football, soccer and track. He also takes private violin lessons. [REDACTED] has developed a strong peer group of friends that provide him with strong emotional, ethical and moral support....

[REDACTED], my second son, is in the 3<sup>rd</sup> grade.... [REDACTED] requires special education for a lisp. In Cameroon, there is no special education for children with deficiencies like [REDACTED]'s speech impediment. Currently, he is able to spend time with a speech therapist each week in order to correct it. With continued intervention and proper tutelage [REDACTED]'s teachers believe he will be able to overcome this current speech impediment. This would not be the case if we were in Cameroon....

[REDACTED] is my youngest daughter. She is in 1<sup>st</sup> grade.... She is thriving both academically and socially....

Finally, our lives could also be at risk as Americans residing in Cameroon.... On April 16, 1990, I was assaulted by three unidentified men posing as taxi drivers in Yaounde, Cameroon. The men were armed, and after they took money, they drove me to a secluded area, raped me and beat me to unconsciousness....

Moreover, I do not want to subject my children to the humiliation and ostracization they would face as a result of my tarnished social standing. I do not want them to bear my shame as a victim of rape, as is customary in Cameroon. Most importantly, however, I do not want to place my daughters at risk for suffering the same brutal attack I did.... I do not feel safe in Cameroon, and I do not believe that my children would be safe there either....

*Affidavit of* [REDACTED] dated January 8, 2007.

Counsel has provided numerous articles about crime and medical care in Cameroon. As stated by the Bureau of Consular Affairs, U.S. Department of State,

...Crime is a serious and growing problem throughout Cameroon and U.S. citizens should exercise caution when traveling in Cameroon. Internet-based crime is escalating rapidly, and Americans should be extremely skeptical of commercial arrangements that involve sending money for goods or services not yet delivered (see below).

All foreigners are potential targets for theft with possible attendant violence. Petty crimes, crimes against persons, thefts from vehicles, and of vehicles are the most common criminal activities. Armed banditry is a growing problem throughout all ten provinces in Cameroon. Specifically, incidents of armed highway robbery have been reported in the North West, West, South West and East provinces. Armed bandits have erected road barricades on major routes that link rural towns to provincial headquarters, and have taken as many as 100 cars in a single attack. To curb banditry, security personnel may request persons to show their passport, residence card, driver's license, and/or vehicle registration at random checkpoints. Certified copies of these important documents should be kept in a secure location separate from the originals. Security personnel have been known to ask for bribes and may hurt citizens who refuse to pay. The U.S. Government does not condone bribery or corruption of any kind.

The risk of street and residential crime is high, and incidents of violent crime are on the rise throughout the country. During the last year there has been an increase in the number of carjacking and armed burglary incidents in residences and restaurants, particularly in Yaoundé and Douala. Carjacking and robbery has also been reported on rural highways, especially in the Northern provinces and regions near Cameroon's border with the Central African Republic. On March 27, 2006, 11 armed men attacked a group of 4 U.S. citizens in a private residence (adjacent to a hotel frequented by expatriates) in Kribi, located in the Southern province. A group of five armed bandits held up and robbed staff and guests of a hotel in Ngaoundere (Adamawa Province) on December 20, 2006. Similar incidents occurred in the middle of the night at hotels in Bertoua (East Province) on April 22, 2007, and in Yaounde (Central Province) on May 15, 2007 when assailants broke into hotel rooms and robbed the residents. Americans were among the victims. Crimes against property, such as carjacking and burglaries, have often been accompanied by violent acts and have resulted in fatalities. There were four incidents of armed robberies in the month of April 2007, involving American citizens in or near restaurants in Yaoundé and Bertoua. Also in April 2007, two American women were assaulted and robbed in a taxi.

Due to the frequency of criminal incidents involving public transportation, American citizens are advised that use of public taxis can be dangerous. Public taxis in Cameroon function more like the U.S. bus system with drivers stopping to pick up additional passengers as long as there is space left in the vehicle. There have been numerous reports of assaults and robberies committed by "passengers" in shared taxis since crimes – rape and robbery being among the most common – are often a collaborative effort between the driver and "passengers." If a traveler must use a taxi, the use of a private taxi – or a taxi hired for exclusive use by the individual for that particular trip – where the driver is known to the passenger is a better alternative to the use of shared taxis. Taxi passengers should be particularly vigilant at night.

In January 2007, a French expatriate was fatally shot in the [REDACTED] neighborhood of Yaounde in early 2007. The woman was returning a friend to her residence and interrupted an attempted home invasion. Upon realizing what was happening the friend returned to the vehicle and both women attempted to flee the scene. As they were leaving an armed bandit shot and fatally wounded the driver of the vehicle.

Travelers are advised to remain aware of their surroundings at all times and to follow routine security precautions such as locking car, hotel, and house doors. Travel after dark is extremely risky and should be avoided....

Medical facilities in Cameroon are extremely limited. Even in large cities, emergency care and hospitalization for major illnesses and surgery are hampered by the lack of trained specialists, outdated diagnostic equipment, and poor sanitation. Medical services in outlying areas may be completely nonexistent. Doctors and hospitals often require immediate payment for health services in cash. Pharmacies in larger towns are well stocked, but in other areas many medicines are unavailable. Travelers are advised to carry their own supply of needed prescription and anticipated over-the-counter medicines with them.

Malaria is a serious and sometimes fatal disease. Plasmodium falciparum malaria, the type that predominates in Cameroon, is resistant to the antimalarial drug chloroquine. Because travelers to Cameroon are at high risk for contracting malaria, the Centers for Disease Control and Prevention (CDC) advises that travelers should take one of the following antimalarial drugs: mefloquine (Lariam - TM), doxycycline, or atovaquone/proguanil (Malarone -TM). Travelers who become ill with a fever or flu-like illness while traveling in a malaria-risk area and up to one year after returning home should seek prompt medical attention and tell the physician their travel history and what antimalarials they have been taking. For additional information on malaria, including protective measures, see

the CDC Travelers' Health web site at <http://www.cdc.gov/malaria/>. There are periodic outbreaks of cholera in Cameroon. Yellow fever can cause serious medical problems, but the vaccine, required for entry, is very effective in preventing the disease....

*Country Specific Information-Cameroon, Bureau of Consular Affairs, U.S. Department of State, dated June 7, 2007.*

With respect to the applicant's children, the record indicates that they are integrated into the U.S lifestyle and educational system. Extensive documentation of the children's successful involvement in the school and the community has been provided by counsel. They have never lived outside the United States and are unfamiliar with Cameroonian customs. 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 and relocate them to Cameroon would be a significant disruption that would constitute exceptional hardship.

In addition, the children would be exposed to crime and violence in Cameroon, as the applicant herself traumatically experienced in 1990, and would be constantly concerned for their own safety and security. Finally, due to [redacted] and [redacted]'s documented medical issues, residing in Cameroon would likely lead to exceptional hardship as they would not have access to appropriate medical care should the need arise. The AAO thus concludes that the applicant's U.S. citizen children would experience exceptional hardship were they to accompany the applicant to Cameroon for a two-year term.

Regarding the applicant's spouse, the record indicates that the applicant was born in Cameroon. It has not been established that the applicant's spouse would be unable to obtain gainful employment in Cameroon and/or that he would be unable to return to his current position with the State of Illinois after the two-year period is completed. Moreover, although the record indicates that the applicant's spouse has been diagnosed with obstructive sleep apnea, it has not been established that such condition can not be properly treated in Cameroon. Finally, counsel has not documented that the applicant's spouse would be unable to obtain medical coverage in Cameroon. As such, it has not been established that the applicant's spouse would experience exceptional hardship were he to reside in Cameroon for a two-year period.

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

...It would be an extreme psychological hardship on me if Frida [the applicant] is denied her foreign residency waiver. She is the love of my life and my support. Her absence would adversely affect my daily life. I would be truly devastated. We love each other very much and have always functioned as a couple. We carry out our duties and responsibilities together. Without her here, my life

would become extremely difficult. I would be deprived of her companionship and her love....

If [REDACTED] were to relocate to Cameroon, I would also worry a lot about her safety in the midst of the crime and violence prevalent in Cameroon. I would worry especially since she would be without the protection of her husband. Without me, she would be more susceptible to violence, rape and discrimination as a single woman. Moreover, [REDACTED] could not count on the Cameroonian government or police to protect her from discrimination and exploitation....

It would also place an extreme psychological hardship on our children if [REDACTED] is forced to return to Cameroon. Their psychological pain would hurt me, as their father. Right now, my children are very lucky to have such a loving mother to take care of them. As a result, they are healthy and happy emotionally....

*Affidavit of [REDACTED], dated January 18, 2007.*

Due to the applicant's spouse's dependence on the applicant for his own emotional and psychological well being, the concerns he has expressed with respect to raising four children without the presence of one parent for a two-year period, and the fears and anxieties experienced by him with respect to his spouse's anticipated return to Cameroon, in light of her traumatic experience in 1990 when she was kidnapped, raped and beaten, the AAO finds that the applicant's departure for a two-year period would cause the applicant's spouse emotional and psychological hardship that would be significantly beyond that normally suffered upon the temporary separation of families. Regarding the applicant's children, the AAO concludes that separating a mother from her four young children for a two-year period would cause the children exceptional hardship.

The AAO finds that the applicant has established that her U.S. citizen children would experience exceptional hardship were they to relocate to Cameroon and in the alternative, were they to remain in the United States without the applicant, for the requisite two-year term. As for the applicant's spouse, although it has been established that he would suffer exceptional hardship were he to remain in the United States without the applicant for a two-year period, it has not been established that he would suffer exceptional hardship were he to reside in Cameroon for the requisite period. 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 her 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 director so that she 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 Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State, Waiver Review Division.