

Identifying data deleted to
prevent classify unwarranted
invasion of personal privacy

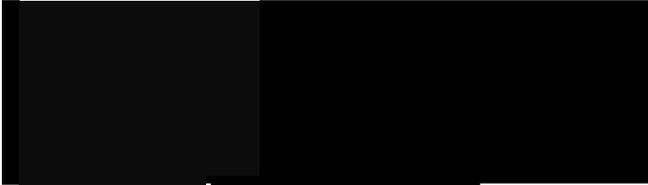
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



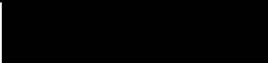
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

tl3



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: FEB 13 2008

IN RE:

Applicant:



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.

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 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 [REDACTED], is a native of the West Bank 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 into the United States as a J1 nonimmigrant exchange visitor on July 13, 2002 and remained in this status until June 30, 2007. The record reflects that the applicant and his wife, who the applicant states has a J1 visa, had a U.S. citizen daughter on October 12, 2005. The applicant presently seeks a waiver of his two-year foreign residence requirement in the West Bank based on the claim that his U.S. citizen daughter will suffer exceptional hardship if she lives in the West Bank for two years or if she is separated from the applicant for two years.

The director found that the applicant had failed to establish his daughter would suffer exceptional hardship if she moved to the West Bank with the applicant. The application was denied accordingly.

[REDACTED] asserts on appeal that the immigration officer claims that his daughter will not be exposed to violence in the West Bank and that the violence and terrorism there is similar as to other parts of the world. [REDACTED] states that the immigration officer ignores that traveling to the West Bank is dangerous, with the U.S. Department of State issuing many travel warnings. [REDACTED] states that although his daughter does not have a medical condition, the whole health care system in the West Bank went on strike for months, which would deprive her of basic health services, including vaccinations, and would prevent emergency care. He states that he previously described his wife as not being able to obtain an ambulance to travel to the hospital to have their child delivered. [REDACTED] states that the immigration officer ignored his discussion about water pollution in the West Bank. [REDACTED] states that in the West Bank poverty is common and proof of financial hardship is that people have not been paid their salaries for months. He states that life in the West Bank is very difficult and unsafe and a person maybe killed while walking in the street. [REDACTED] states that he and his wife did not travel to the West Bank in five years, even though their parents live there. He states that the situation is worse now with internal fighting between Fatih and Hamas, and that he did not know that it would be difficult going back to the West Bank when he left from there.

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, [s]hall 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 at 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 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. . . 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 (Board) stated that, "[t]emporary 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)".

In *Matter of Bridges*, 11 I&N Dec. 506 (BIA 1965), the Board stated:

In determining the merits of an application for a waiver of the foreign residence requirement, we must consider the Congressional intent of the statute . . . the Subcommittee reiterates and stresses the fundamental significance of a most diligent and stringent enforcement of the foreign residence requirement. The report states, "It is believed to be 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 this country would cause personal hardship."

The record contains birth certificates; U.S. Department of State Travel warnings; articles about health care, education, environmental pollution, violence, barrier construction, and the economy in the West Bank; a July 26, 2007 letter by [REDACTED] M.D.; a marriage contract; an affidavit by the applicant; photographs; a letter dated November 22, 2006 by [REDACTED] M.D., with Anchor Medical Office; a letter dated November 11, 2006 by [REDACTED], a pediatrician; a letter dated December 4, 2006 by [REDACTED] M.D., Arab Care Hospital, Ramalla-West Bank; a letter dated October 2, 2006 by [REDACTED] M.D., with University of Toledo College of Medicine; a letter dated October 11, 2006 by [REDACTED], sister-in-law of the applicant; a letter dated December 18, 2006 by [REDACTED] brother-in-law of the applicant; a letter dated November 30, 2006 by [REDACTED] with Selfit Health Unit, West Bank; and other documents.

In his affidavit [REDACTED] indicates that his U.S. citizen daughter (born on October 12, 2005) would be left alone in the United States as he and his wife are on J1 visas and must return to the West Bank to fulfill the two-year foreign residence requirement.

The October 11, 2006 letter by the applicant's sister-in-law, [REDACTED] states that she lives in a [REDACTED] with her family, where they have a difficult life because of the ongoing violence, frequent accidents of gun shots and bombardments that have involved children, and the bad economic situation caused by the government's inability to pay salaries. She states that she and her husband work in governmental agencies and have not received their salaries for more than eight months and have been on strike. She states that her children are not in school because of strikes, and that it is difficult to afford basic life needs for them due to the economic situation. She conveys that when the applicant and his family sought to leave the West Bank to move to the United States they could not leave because the city of Ramallah was closed; they were not allowed to leave the city and she states that her brother-in-law's family had been exposed to a **gun battle**.

[REDACTED] states that her brother-in-law and his family stayed with her family after leaving [REDACTED] because the borders from the West Bank to Jordan were closed for one week. She states that it is too dangerous for her brother-in-law and his family to live in the West Bank now.

The letter by the applicant's brother-in-law, [REDACTED] who is the deputy minister assistant of ministry of the local government, conveys that the **health situation in the** West Bank is miserable, with hospitals under standards due to lack of equipment and staff. He states that during the strike all governmental hospitals serving most of the nation closed except for emergencies and that many children died from secondary to poor medical care and that many missed shots and had no protection against basic infectious agents. [REDACTED] states that the economic situation in the West Bank depended primarily upon the government employers as it was the only group that continued to gain money despite the political situation. He states that the government stopped paying salaries and the nation became poorer.

The November 30, 2006 letter by [REDACTED] with the Selfit Health Unit in the West Bank conveys that he is a physician and the average pay for a physician of the applicant's specialty would be a monthly income of 2,500 shekel, which he states is barely enough to support one person. He states that physicians have not been paid by the government for seven months because it is not able to pay employee salaries, and states that government health care workers are on strike, which has resulted in the lack of affordable health care services. He states that the applicant's employment opportunities are severely limited.

The Consular Information Sheet dated February 8, 2006 states that "[f]or safety and security reasons, U.S. Government American personnel and dependents are prohibited from traveling to any cities, towns or settlements in the West Bank, except for mission-essential business or other approved purposes." The civilian travel warning states that U.S. citizens, including tourists, students, residents, and U.S. mission personnel, have been injured or killed in terrorist actions in the West Bank and that American citizens should exercise extreme caution and avoid, to the extent possible, public areas and public transportation.

The U.S. Department of State (DOS) Travel Warning dated January 17, 2007 repeats the safety and security warning for U.S. Government American personnel and their dependents as stated in the DOS Travel Warning dated February 8, 2006. It also states that American citizens are urged to exercise a high degree of caution and common sense when patronizing restaurants, cafes, malls, places of worship, and theaters, especially during peak hours. It strongly encourages Americans in the West Bank to register with the consular section of the U.S. Embassy in Tel Aviv or Jerusalem.

The July 13, 2007 Travel Warning is similar in content to the February 8, 2006 and January 17, 2007 travel warnings.

The article by Arab American News.Com conveys that the Palestinians in the West Bank have had severe shortages of essential economic resources and the inability of local authorities to provide salaries for civil servants and the restrictions on the movements of individuals and goods have caused extreme hardships on Palestinian men, women, and children. It states that the economy has been devastated and many residents have been unable to buy essential items like food. The article conveys that the World Bank's stated in their May 2006 report that the Palestinian economy will experience a dramatic decline over the next eight months and by the end of 2006, unemployment will increase to a projected 40 percent and the poverty level will climb to 67 percent.

The Voices of Children article, dated September 12, 2006, by [REDACTED] conveys that thousands of children in the West Bank and Gaza have been without medical care since health workers went on strike earlier in the month. The article states that along with other government workers, they have not been paid for several months because of the continuing conflict in the occupied Palestinian territory. The article states that the strike has caused shortages of staff and medical supplies and made it difficult for parents and children to access basic health services and has jeopardized the 'cold chain' system, which is crucial for storing vaccines.

The Human Rights Watch article dated October 6, 2006 states that the Hamas-led Palestinian Authority (PA) government had a financial crisis since taking office in March because Israel refused to remit tax monies it collects on behalf of the PA. Many international donors, the article states, also suspended direct aid to the PA. The tax monies and international aid make up 75 percent of the PA's monthly budget, according to the article.

Other submitted articles convey that Israeli forces have raided the West Bank city of Nablus, going door-to-door for a third straight day; Israel erected a 10m high wall to control and restrict movement in the occupied territories; the United Nations' Special Rapporteur for Human Rights in the Occupied Palestinian Territories states that Israel is guilty of occupation, apartheid, and colonialism; United Nations statistics show that nearly 70 percent of Palestinians now live in poverty; and delayed hospital access in the West Bank may worsen medical conditions.

The AAO has carefully considered all of the submitted evidence in rendering this decision.

In *Huck v. Attorney General of the U.S.*, 676 F. Supp. 10 (D.D.C. 1987) the U.S. District Court, District of Columbia, stated that the Immigration and Naturalization Service (INS, now CIS) must consider the totality of circumstances when making a 212(e) waiver exceptional hardship determination. (Citing *Slyper v. Attorney General*, 576 F.Supp. 559, 560 (D.D.C. 1983) and *Ramos v. INS*, 695 F.2d 181, 189 (5th Cir. 1983)).

Because the applicant stated that his daughter would remain alone in the United States during the two-year foreign residence requirement, the AAO finds that the applicant established exceptional hardship upon his daughter if she were to remain in the United States for two years without him.

Upon review of the totality of circumstances in the present case, the AAO finds the evidence in the record establishes that exceptional hardship would be imposed upon the applicant's two-year old daughter if she were to accompany the applicant to live in the West Bank for two years.

The documentation in the record conveys there is widespread and ongoing violence in the West Bank, unremitted tax monies and suspended international aide have impacted the West Bank's economy, and strikes in the West Bank have greatly reduced healthcare services. Based on the submitted evidence, the AAO finds that the instability of the economic and political situation in the West Bank establishes that the applicant's daughter would suffer exceptional hardship if she moved with him to the West Bank. The AAO finds that the applicant has established that he would not be able to financially support his daughter, given that the poverty level has risen to 67 percent; she would be exposed to raids and violence; and would not have access to basic or emergency healthcare services if she were to accompany the applicant to live in the West Bank.

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 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.