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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JAN 03 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.

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 of Kuwait and a citizen of Egypt who obtained J1 nonimmigrant exchange status on July 10, 2003 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 U.S. citizen child, born in March 2003, would suffer exceptional hardship if he moved to Egypt temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Egypt.

The director determined that the applicant failed to establish that his child would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Egypt. *Director's Decision*, dated July 11, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated August 21, 2007 and a copy of an interoffice memorandum, issued by [REDACTED] Acting Associate Director, Domestic Operations, to all Service Center Directors, entitled *Removal of the Standardized Request for Evidence Processing Timeframe Final Rule*, dated June 1, 2007. 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 *[redacted]*, *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 child would experience exceptional hardship if he resided in Egypt for two years with the applicant. To support this contention, the applicant states the following:

...My son, ██████ would suffer exceptional hardship under a number of circumstances if my family were forced to move to Egypt. My wife and I would not be able to make enough money to support ██████, leaving him in poverty in Egypt. Additionally, ██████ is a very young child with a developing immune system that could not possibly protect him from Egypt's poor environment and health conditions, which would certainly put his health at great risk. Finally, the sharp rise in anti-Americanism in Egypt would also pose a psychological and physical threat to my child. Egypt is very unstable, and there are frequent terrorist attacks on civilian targets.

...My son has once already developed sickness due to the deplorable water quality in Egypt...I am afraid of what would happen to my son's developing body and mind should he be forced to live in the poor environmental conditions of Egypt. We were fortunate that ██████'s illness, though serious, did not require emergency care. Unfortunately, if my son does become very ill and needs emergency care, such care is not even guaranteed...Egypt's rapid but unmanaged development has led to a range of environmental problems such as air and water pollution...

My son's upbringing in the United States will make him stand out among the other native Egyptian children and create great anxiety and possible physical harm. If he were to go to Egypt, he would be very obviously different from the other children...and he would immediately be identified as 'the American boy.' Due to the prevailing hostility towards the United States in the culture, the Egyptian children will most certainly single out ██████ for teasing and bullying...

Egypt has been undergoing a great deal of political instability in recent years, as Islamic fundamentalists have been increasingly vocal about their opposition to the government's relationship with the United States. In fact, some of these groups are associated with known terrorist organizations that have conducted attacks on government and civilian targets...

I, as well as my family, will be made a target by criminal elements in Egypt who will look at my United States education as an unfounded basis of wealth. I am afraid that my family would fall victim to the epidemic crime wave of kidnapping and murder in Egypt because of this perception...

...I would still make a low salary in Egypt. Physicians in Egypt, though well respected, do not make high salaries as in the United States...I am truly concerned that I will not be able to support my family for even basic living expenses, which will of course cause my son to suffer extreme economic hardships...

My wife, [REDACTED], was a travel agent before moving to the United States, which she had to give up in order to care for our son [REDACTED]. Her long absence from her field will make her less likely to find work because of the extreme competitive nature of the travel agency business...

Egypt has a terrible school system...I am also concerned for my son's English language development. Currently, [REDACTED] speaks primarily Arabic. My wife and I felt that he would pick up on English quicker once he entered kindergarten in the United States. Instead, if he spends kindergarten and 1st grade in Egypt, he will not be exposed to English (unless he enters a language private school in Egypt, which I will not be able to afford on my low salary). This will cause him exceptional difficulty when he tries to reintegrate into the United States schooling system...I am afraid that my son will suffer adverse educational problems at an early age that will most probably have long-term effects on his education...

Affidavit of [REDACTED], dated February 8, 2007.

To corroborate the above statements by the applicant, counsel has provided a number of articles regarding country conditions in Egypt and letters in support. Dr. [REDACTED] attests to the medical problems encountered by the applicant's son when he visited Egypt in July 2006. As Dr. [REDACTED]

...I...treated Dr. [REDACTED] son, [REDACTED] for his incidence of severe diarrhea while we was in Egypt. He suffered symptoms such as fever, diarrhea, vomiting and sore throat. I treated him with systemic antibiotics, antipyretics and non-absorbable antibiotics for gastrointestinal cleansing. I believe his condition was caused by the deplorable water quality in Egypt...If Dr. [REDACTED] son were to return to Egypt, it is likely he would be prone to diarrhea again. He has not built up the immunity to maintain his health in Egypt. Moreover, Egypt does not have the proper medical capabilities to treat [REDACTED] were he to become severely ill from complications our health system is not up to par as many developed nations...

Medical Case Report from Dr. [REDACTED], Consultant Pediatrician, Ex Head of Pediatrics Departments, Military Family Hospitals, dated November 29, 2006.

Professor [REDACTED] Ph.D. states as follows:

...There is a constant and serious threat to the lives and livelihoods of physicians in Egypt, because of an epidemic crime wave involving the targeting of prominent community members for kidnapping and murder. Many innocent physicians have been murdered in Egypt in the last few years in a phenomenon that has many underlying causes. One of these causes seems to be class struggle targeting prominent figures for ransom. Physician being some of the most respected members of their communities, are continuously subject to kidnappings, robbery and murder. As a result, innocent Egyptian physicians have been kidnapped or even worse, murdered in cold blood. I personally know of many physicians who have been kidnapped and murdered for no apparent reason, and although I am not a physician, I have nearly escaped such a fate...There is no doubt that if [REDACTED] [the applicant] were to live in Egypt, he would be targeted as well. Even more troubling is that [REDACTED]'s son, [REDACTED] will be targeted for kidnapping in order to demand ransom from Amr. I am thus very fearful...

Letter from Professor [REDACTED], Ph.D., Faculty of Science, Kuwait University, dated November 27, 2006.

Dr. A [REDACTED] attests to the economic hardship prevalent in Egypt for physicians and their families:

...I have the experience of working in government and private tertiary care hospitals. As I have worked in government as well as private sector, both abroad and in Egypt. As such, I am well aware about the job opportunities for physicians especially Internal Medicine, in Egypt.

Unfortunately, even after post-graduate training, American-trained physicians are not recognized in Egypt, and they have great difficulty to find jobs in their specialty[.] Dr. [REDACTED] [the applicant's] advanced training in Internal Medicine will not be of any use, as he will not be given any preference and end-up being a general practitioner who gets paid in the range of \$200-\$300 per month. As anybody can understand it is impossible with this kind of salary to barely support oneself, much less a family. For this reason, I feel that Dr. [REDACTED] would suffer economic hardship if he had to assume a career in Egypt, and his family would then suffer in-turn because he would have inadequate money to support them.

Letter from [REDACTED], Internal Medicine Consultant, General Manager of [REDACTED]

Counsel has also provided a psychological evaluation from Dr. [REDACTED], Ed.D., a licensed psychologist. As stated by Dr. [REDACTED]

... [REDACTED] the applicant's son] is currently under the care of a pediatric urologist, for a condition known as retractile testicle, a testicle that ascends from and descends into the scrotum. At present, he is being followed for this condition...

...He may need surgery, which his parents would prefer be performed in the United States, where they feel that medical care is more advanced.

[REDACTED] presently speaks primarily in the Arabic language. If he has to live in Egypt for two years before returning to the United States, his English language development will be far behind the learning curve of other students in the United States when he returns. In all probability, he would be placed in an English as a second language program. Students in such programs usually have lower reading scores. He would be subjected to discrimination in Egypt...he also might become a target for kidnappers...

Affidavit of [REDACTED], Licensed Psychologist, dated October 19, 2006.

Based on the political and religious turmoil in Egypt, the security issues referenced above, the economic hardship faced by physicians and the applicant's child's medical, social and academic concerns were he to reside in Egypt for two years, the AAO finds that the applicant's U.S. citizen child would experience exceptional hardship were he to accompany the applicant to Egypt for a two-year period.

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

...I transferred to a J-1 visa to pursue a residency in Internal Medicine, in which I am currently a Chief Resident. I am subject to the two-year foreign residency requirement...My wife is on a J-2 visa, so if my waiver were denied, she would have to return to Egypt with me. Our United States citizen son is only 3 years old (nearing four), which makes him far too young to leave behind in America without his parents...

Supra at 1.

As the record indicates, both the applicant and his wife are J visa holders subject to the two-year home residency requirement. Such a requirement would leave their young child in the United States without his parents. By default, this situation would constitute exceptional hardship to the applicant's child if he remained in the United States.

The AAO finds that the applicant has established that his child would experience exceptional hardship were he to relocate to Egypt and in the alternative, were he to remain in the United States without the applicant, for the requisite two-year 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 child 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 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 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 Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State, Waiver Review Division.