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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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#3

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 07 2008

IN RE: [REDACTED]

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:

SELF-REPRESENTED

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 appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Turkmenistan who was admitted to the United States in J1 nonimmigrant exchange status on August 1, 2003 to participate in a program funded by the U.S. Department of State. 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 foreign residence requirement, based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to Turkmenistan temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled her two-year foreign residence requirement in Turkmenistan.

The center director determined that the applicant failed to establish that her spouse would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Turkmenistan. *Center Director's Decision*, dated March 20, 2007. The application was denied accordingly.

In support of the appeal, the applicant provides a Form I-290B, Notice of Appeal, and a letter detailing the hardship waiver claims. 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 spouse would experience exceptional hardship if he resided in Turkmenistan for two years with the applicant. To support this contention, the applicant states the following:

...For years Turkmenistan has been ranked as the world's worst in numerous categories, including health, human rights, corruption, and political freedoms...

...Upon our return to Turkmenistan we would have to reside with my parents in the city of Mary, where health conditions are even more alarming than in Ashgabat and where medical care is practically unavailable. Therefore, my U.S. citizen's spouse's health and wellbeing would be in great danger...

My husband has a substantiated fear of persecution if he were to enter Turkmenistan. Given that Turkmenistan is a Muslim country with people having East Asian features combined with Middle Eastern features, and my husband being a Caucasian American, he would likely be discriminated against...meetings and associations with any and all foreigners are illegal monitored, and often result in indiscriminate imprisonment...Arbitrary arrest, incommunicado detention, and prolonged detention remain serious problems...Denial of due process and fair trial are common. The chances of such treatment are greater for my husband, given his employment with the US Agency for International Development...

Supporters of extremist groups such as the Islamic Movement of Uzbekistan, Al-Qaeda, and the Eastern Turkish Islamic Movement remain active in Turkmenistan. These groups have expressed anti-U.S. sentiments and may attempt to target U.S. Government or private interests in Turkmenistan. Being currently employed by the US Agency for International Development, my husband would be a prime target for such groups...

...My spouse's inability to speak the local languages (Russian or Turkmen) would clearly make it impossible for him to find employment in local organization...

My husband would simply be unable to continue his current career in democratic development and democracy promotion. Such job opportunities do not exist in Turkmenistan, and any independent attempts to work as a consultant in such a field would undoubtedly result in intimidation, harassment, imprisonment, or worse. Working for the US Agency for International Development in Washington, DC, he clearly could not continue such work from Turkmenistan...

Declaration of [REDACTED] dated April 16, 2007.

The U.S. Department of State corroborates many of the applicant's statements. As stated in the U.S. Department of State's Country Reports on Human Rights Practices for 2005,

Although the constitution declares the country to be a secular democracy and presidential republic, Turkmenistan is an authoritarian state dominated by president-for-life Saparmurat Niyazov who retained his monopoly on political power...The

government continued to commit serious abuses and its human rights record remained extremely poor. Authorities severely restricted political and civil liberties. The following human rights problems were reported...denial of due process and a fair trial...arbitrary interference with privacy, home and correspondence...restrictions on speech, press, assembly, and association...restrictions on religious freedom...a government-maintained black list of individuals not permitted to travel abroad...violence against women...restrictions on free association of workers...

The law does not regulate surveillance by the state security apparatus, which regularly monitored the activities of officials, citizens, opponents and critics of the government, and foreigners. Security officials used physical surveillance, telephone tapping, electronic eavesdropping, and informers. There was one government-controlled Internet service provider. The government monitored...email and Internet usage and cut service for accounts used to visit sensitive sites. The government reportedly intercepted surface mail before delivery, and mail taken to the post office had to remain unsealed for inspection. The government closed the last remaining international courier service, DHL, and all business was diverted to state-run Turkmenpochta...

...Persons expressing views critical of or different from those of the government were arrested on false charges of committing common crimes and in some cases subject to abuse, harassment, and deprivation...

During the year the government increased already significant restrictions on academic freedom. It did not tolerate criticism of government policy or the president in academic circles, and it discouraged research into areas it considered politically sensitive...

U.S. Department of State Country Reports on Human Rights Practices-2005, dated March 8, 2006.

Based on the substandard medical care in Turkmenistan, the problems the applicant's spouse would encounter in terms of finding gainful employment, the language barrier, the surveillance and constant monitoring of foreign nationals, especially in his area of expertise, namely democratic development and democracy promotion, and the safety concerns with respect to Turkmenistan's proximity to regions of past and current instability, including Iran, Uzbekistan, and Afghanistan, the AAO finds that the applicant's spouse would encounter hardship that would go significantly beyond that normally suffered upon the temporary relocation based on a spouse's two-year home foreign residency requirement.

The second step required to obtain a waiver is to establish that the applicant's spouse would suffer exceptional hardship if he remained in the United States during the two-year period that the applicant resides in Turkmenistan. As stated by the applicant,

...If I were to return to Turkmenistan, there would be a high probability that I would never reunite with my U.S. citizen spouse due to the reinstatement of the exit visa requirements by the Turkmen government and the subjective nature of the visa-issuing process.

It is very likely that I will encounter suspicion, discrimination, harassment, and an increased likelihood of arbitrary imprisonment based solely on my marriage to a U.S. citizen and association with a foreigner, which will cause my U.S. citizen spouse tremendous psychological hardship by putting him in constant fear for my wellbeing.

Lack of private, consistent, and secure communication due to the strict control by the Turkmen government of mail, telephone, and electronic mail services would place intense psychological hardship on my U.S. citizen spouse...

Affidavit from [REDACTED], dated December 21, 2006.

The applicant has not provided any documentation from a mental health professional that describes the ramifications that the applicant's spouse would experience were he to be separated from the applicant for two years. In fact, the applicant has not provided any personal statements from her spouse explaining, in his own words, what exceptional hardship he will face were the applicant to reside abroad for two years. Moreover, no documentation has been provided that corroborates that the applicant will not be allowed to leave Turkmenistan to return to the United States after her two-year residency requirement has been fulfilled. Finally, no evidence has been provided, such as employment confirmation letters or financial records, that corroborates the applicant's assertion that the applicant's spouse will suffer economic hardship because "...I would have to rely on financial support from my spouse..." *Supra* at 3.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face exceptional hardship if the applicant's waiver request is denied. Although the AAO finds that the applicant would suffer exceptional hardship if he moved to Turkmenistan with the applicant for the requisite two-year period, the applicant has failed to establish that her spouse would suffer exceptional hardship were she to relocate to Turkmenistan while he remained in the United States.

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 not met her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.