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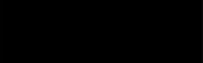
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JUL 15 2008

IN RE:



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 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 Lebanon who entered the United States in J-1 nonimmigrant exchange status on July 4, 2002 to participate in graduate medical 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).¹ The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen child, born in December 2006, would suffer exceptional hardship if she moved to Lebanon temporarily with the applicant and in the alternative, if she remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Lebanon.

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 Lebanon. *Director's Decision*, dated November 13, 2007. The application was denied accordingly.

On December 12, 2007, counsel for the applicant filed the Form I-290B, Notice of Appeal, and provided reasons for the appeal on said form and in a corresponding attachment. Counsel also indicated on the Form I-290B that she would need 30 days to submit a brief and/or evidence to the AAO in support of the appeal. On June 26, 2008, the AAO sent a fax to counsel, stating that to date, the AAO had no record that any further evidence or brief was ever received, and requesting that counsel submit a copy of the brief and/or evidence to AAO, along with evidence that it was originally filed with the AAO within the 30 day period requested, within five business days. On July 2, 2008, the AAO received a faxed copy of a letter from counsel and referenced supporting attachments. 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,
- (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

¹ The record indicates that the applicant's spouse entered the United States as a J2, based on her derivative status as a spouse of the applicant, a J1 visa holder. As such, the applicant's spouse is also subject to the two-year home residency requirement.

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 child would experience exceptional hardship if she resided in Lebanon for two years with the applicant. To support this contention, the applicant states the following:

...As an academician, there is no future in Lebanon. To begin with, jobs in the medical field are scarce, highly competitive and not rewarding enough.... None of the hospitals in Lebanon have dedicated researchers and any research that comes out is by personal initiative with no support or encouragement.... The hospitals are barely able to survive financially and have no resources to allocate to research.... In addition, Lebanon has the highest ratio of physicians to population number. Many physicians graduate from Eastern European and Arabic countries with knowledge and clinical expertise below average. The high number of these physicians willing to work for low wages has caused a significant drop in salaries.... On top of that, physicians in Lebanon are hired based on their political allegiance, their sect and friendships rather than skills and clinical knowledge. My family has never been involved in any political movements and the closest they get to politics is by watching TV. They don't know any influential people who can get me into a decent medical position. It will be hard for me to find a job not to mention that wages are very low and insufficient to support my family....

At the education level, the country is not fairing better.... Schools suffered a lot from the lack of resources and from the lack of direction and control by the state. Few schools have computers. The curricula and books are old. Teachers are not competent enough and many don't even have teaching diplomas, something which was required in the past.... The division of schools and higher education institution along sectarian lines leads to intensification of sectarianism in the country and make the prospects for the future look very negative. If [redacted] [the applicant's child] gets her education in Lebanon, she will be at a disadvantage to other American children. She will not benefit from the higher education provided in the US. More important, as [redacted] [the applicant's spouse] and I, her parents belong to different religions, she will be in very awkward conditions among more 'homogenous' children who may look at her as different and stranger from them.

This would affect her psychologically and may negatively hinder her development and will make her feel as a society reject.

Taking [REDACTED] back to Lebanon will make her face all kinds of pollution, chemical, environmental, soil, water and air pollution....

The medical infrastructure in Lebanon is outdated and lacking in the basics. Many areas outside the cities are without hospitals.... Moreover, Lebanon witnessed a lot of epidemics of contagious diseases like Hepatitis A, Typhoid, Cholera and meningitis. Also in view of the lack of governmental and official control, the rate of food poisoning is very high. The vaccination programs are non-existent and they count mainly on the physicians' qualifications and practices. Food processing from meat to dairy products is often done in a non-sterilized way.... The lack of government control and inability to hold physicians accountable, the lack of requirement for continuing medical education, the lack of norms and regulations for the practice of medicine allow the spread of below average physicians. All these factors led Lebanese children to have a higher infant mortality rates compared to their American counterparts....

The most important problem which I will face with my family if I am obliged to go back to Lebanon is the political and security unrest. Besides the potential for persecution for religious reasons, the political situation is very unstable and in the same context, the country is not secure at all. Anti-Americanism has been high for a long period of time in Lebanon and it is increasing....

...Department of State...regularly issue statements advising the Americans not to go to Lebanon for security reasons and the Lebanese national airline, Middle East Airlines is not allowed to land in the United States. Similar documents were issued by the foreign ministers of Canada, United Kingdom and Australia....

Up until the beginning of the war, the internal political arena kept a certain controlled level of tension which prevented the country from plunging into complete chaos. However, the end of the war changed all equations. The country was now clearly divided into loyalists and opposition.... Armed people and snipers appeared everywhere and started putting checkpoints harassing citizens of different sects. The army had to intervene and call in a curfew in order to stop the violence. Those events happened a block away from where my parents-in-law work. My mother-in-law was still here in Cleveland assisting my wife with our new baby girl, but my father-in-law was at work. Until now, the Lebanese army is stationed at cross roads in the capital and every once in a while fighting erupts.... The tense political situation, the unconstitutional council of ministers, the demonstrations, the sit-ins, the clashes, the repercussions of the July war have all caused a complete deadlock at all levels, political, social, and economic. Different factions are arming

and are training their supporters for military warfare and politicians warning of a new round of fighting against the Israelis or a civil war.

On February 13th, a new kind of explosions occurred. 2 bombs were placed in 2 different buses at peak hours. 3 people died. Those buses originate from my mother's native village and have a stop right in front of my parents' house. One of the killed is a distant relative of my mother. None of the killed had any political affiliations; they were civilians going to work and to school.

The perpetrators of the last explosions were a new Islamic militant faction by the name of 'Faith-al-Islam'. They are very close to al Qaeda and have found safe haven in Lebanon, a country with paralyzed security intuitions, a country divided among itself. Those extremists have been training and have obtained weapons and have pledged to attack the US interests and UN troops in South Lebanon. Other armed, Al Qaeda financed groups include Osbat al Ansar, Jund el Sham and others. In addition to those armed Sunni fanatics, Hezbollah is still armed and is still placed on the terrorist list of several countries. These belligerent parties have transformed Lebanon into a large powder barrel which can explode at any time....

All these events put life in danger. As an American citizen, she may be target for the many different factions who swore to harm Americans. Apart from physical harm, might face other hurdles. is now in a state of development that even the smallest event around her will influence her development and life long personality. Any event that might happen to me, my wife and herself will adversely affect her. Lebanon as stated earlier is at increased risk of another civil war. The constant sectarian violence and the lack of security in the country as a whole make life unbearable. Her learning might get affected. Her social and developmental skills will definitely be impaired. will not be able to do the many things that a young girl can do here. Making friends and going out with them will be difficult. I'm afraid she'll end up being isolated, and she might develop personality problems. She will be facing a new language that she has to learn all over again. She will not gain the ability to communicate and the skills of self-dependence easily....

...The situation in Lebanon, my last country of legal residence, is deteriorating every day. At any point, a new civil war might start. The sectarian violence, the constant turmoil, the insecurity manifested by the latest bombings are very dangerous. Alexa is a valuable target for the many terrorist groups that operate in Lebanon and she will be at a significant risk of being kidnapped or even killed. Add to this the serious psychological harm she might get from any incident that might happen to any of us there, and which will insult her normal development.

Please give [REDACTED] the chance to grow in a stable, secure and Christian environment. She is too fragile to be taken to Lebanon at this age....

Affidavit of [REDACTED], dated May 28, 2007.

Counsel has provided extensive documentation about the problematic country conditions and anti-American sentiment in Lebanon to corroborate the above statements, including articles and letters in support from current residents of Lebanon. Moreover, an updated Travel Warning was issued on May 30, 2008 with respect to Lebanon. As stated by the Bureau of Consular Affairs, U.S. Department of State,

This Travel Warning updates information on security threats and ongoing political violence in Lebanon and informs U.S. citizens of current safety and security concerns. The Department of State continues to urge that Americans avoid all travel to Lebanon. Americans who live and work in Lebanon presently should understand that they are accepting risks in remaining and should carefully consider those risks. This supersedes the Travel Warning for Lebanon issued on May 19, 2008.

On May 7, 2008, Hizballah militants blocked the road to Rafiq Hariri International Airport. The action rendered the airport inaccessible and travelers were unable to enter or leave the country via commercial air carriers. Armed Hizballah and other opposition members proceeded to enter areas of Lebanon not traditionally under their control resulting in heavy fighting and a number of casualties. While there is now full access to the airport and widespread hostilities have subsided, the United States is concerned about Hizballah's willingness to use violence to achieve political ends with little or no warning.

The threat of anti-Western terrorist activity exists in Lebanon; groups such as Al-Qaeda and Jund al-Sham are present in the country and have issued statements calling for attacks against Western interests in the past.

Landmines and unexploded ordnance continually pose significant dangers throughout southern Lebanon, particularly south of the Litani River, as well as in areas of the country where civil war fighting was intense. More than a dozen civilians have been killed and over 100 injured by unexploded ordnance following the armed conflict in July-August 2006. Travelers should watch for posted landmine warnings and strictly avoid all areas where landmines and unexploded ordnance may be present.

Travel Warning-Lebanon, Bureau of Consular Affairs, U.S. Department of State, dated May 30, 2008.

Based on the documented social, economic and political turmoil in Lebanon, strong anti-American sentiment and the U.S. Department of State's recommendation that U.S. citizens avoid travel to Lebanon, the applicant's child's unfamiliarity with the language and customs and financial hardship, the AAO concludes that the applicant's U.S. citizen child would experience exceptional emotional, psychological and financial hardship were she to accompany the applicant to Lebanon for a two-year period.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen child would suffer exceptional hardship if she remained in the United States during the two-year period that the applicant resides in Lebanon. Counsel 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 Lebanon because no one would be available to care for his child. As stated by the applicant's spouse,

...Like my husband, I am in the United States on a J2 visa.... We don't have family in the United States, and therefore [the applicant's child] will have to go back with us to Lebanon....

Affidavit for [redacted], dated May 28, 2007

As the record indicates, both the applicant and his wife are J visa holders subject to the two-year home 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 child in the United States without her parents. This situation would clearly constitute exceptional hardship to the applicant's child if she remained in the United States.

The record, reviewed in its entirety, supports a finding that the applicant's U.S. citizen child will face exceptional hardship if the applicant's waiver request is denied. 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 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.