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U.S. Citizenship  
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Services

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#3

[REDACTED]

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUN 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:

[REDACTED]

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 applicant is a native of Sri Lanka and a citizen of Trinidad and Tobago who was admitted to the United States in J-1 nonimmigrant exchange status in May 1995 to participate in graduate medical training. 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 child, born in November 2006, would suffer exceptional hardship if he moved to Trinidad and Tobago 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 Trinidad and Tobago.

The director determined that the applicant failed to establish that her U.S. citizen child would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Trinidad and Tobago. *Director's Decision*, dated November 5, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated December 14, 2007 and a copy of an Interoffice Memorandum, issued by Donald Neufeld, Acting Associate Director, Domestic Operations, 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:

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 child would experience exceptional hardship if he resided in Trinidad and Tobago for two years with the applicant. To support this contention, the applicant states the following:

In the last decade there has been an escalation of the crime rate in the country, partially due to the proximity of the shores to Columbia, resulting in an increase in the drug trade. In 2003, there were 229 murders, 260 in 2004, 387 in 2005, and 369 in 2006. This is compared to 34 in Rhode Island in 2005, which is of a similar size and population to Trinidad. To add to the increasing violence, failing police and judicial services result in the vast majority of criminals, especially murderers, being set free or never arrested. In the first half of 2006 only 36 murders were solved.

The crimes range from school violence, to rapes, to armed robberies, to kidnappings to brutal and gruesome murders.... In addition there have been, in the last year, terrorist acts in the form of bombings and bomb threats in schools, government offices, and malls. While Columbia is well known for its crime situation...Trinidad and Tobago is a small country and receives little international press. It is still however one of the least safe countries in which to live with the 3<sup>rd</sup> highest murder rate and the 2<sup>nd</sup> highest kidnapping for ransom rate in the world.

Trinidad is a country which today lives in fear: homes are surrounded by fences and walls...most houses have 2 or 3 large dogs in their yards, and despite this, home invasions are common. Many who can afford it have armed 24 hour security guards on the premises. People fear leaving their homes because of the threat of being kidnapped and eventually perhaps murdered.... The police service is so poor that it takes hours for a police officer to show up when a crime is reported....

We have lived in the US for 10 of the past 12 years, and in that time, we have not been the victim of a single crime, nor personally know anyone who has been. In stark contrast, during the last 10 years, my immediate family and friends living in Trinidad have fallen victim to direct acts of violence and murder....

- (a) [REDACTED]s [the applicant's child's] 26-year-old uncle and my brother-in-law, [REDACTED] was shot to death outside a nightclub on December 5, 2004. This was in a 'relatively safe' suburb of the capital city, with nightclub security guards within a couple of hundred feet. He was accosted at gun-point while getting into his car and murdered after handing over his money and his ATM card without a struggle. His accused murderer was 18 at the time. His brother is also in jail for drug related crimes and his family has openly threatened to 'get' our family for putting their son in jail. This would impose a great threat to my US citizen son....
- (b) [REDACTED]'s grandparents own a petrol station in Trinidad. It has been robbed at gun point at least 15 times in the past year, with losses of over \$60,000. In one instance, [REDACTED]'s grandfather was also accosted at gun-point. [REDACTED] grandmother received a phone call after one of these robberies stating that if they did not drop the investigation/complaint, her husband's 'body will be delivered in a body bag.' No arrests have ever been made in any of these robberies.
- (c) [REDACTED]s aunt was returning home in the afternoon August 15 1998 when she was accosted in her garage by men with guns and knives. She was tied up and the house was robbed. She had to beg for her life. No arrests were ever made.
- (d) [REDACTED]'s grandmother was mugged outside her home in October 2006 in broad daylight at 3.00 pm, and her purse snatched.
- (e) [REDACTED]'s grandparents' home has been robbed twice while they were asleep. No arrests were made. These robberies occurred in April and December 2005.
- (f) A family friend with a business in the capital Port-of-Spain was robbed at lunch-time at gun point in her business. She and her husband were beaten, and he was shot at close range to his head after handing over the money without a struggle....
- (g) An old schoolmate of mine was kidnapped, brutally murdered and beheaded on September 21<sup>st</sup> 2005. One of the arrested men is a former police officer.
- (h) [REDACTED]s grandparent's neighbor, had a sister and nephew that were murdered during the early morning hours of September 10, 2004, in their

home in an affluent suburb of the capital. The murderers have not been arrested....

I cannot adequately express the devastation and fear that these crimes have wrought on our families, especially my brother-in-law's murder. Every one of my immediate family members has been a victim or personally affected by crime in Trinidad and Tobago.... We have not been to Trinidad since November 2005 because of this fear of crime.

The current state of life in Trinidad & Tobago is so deplorable that the chances of falling victim to crime or violence are virtually guaranteed, especially since many of the documented crimes...have been confined exclusively to members of our own East Indian ethnic community....

...Since my U.S. citizen son [REDACTED] shares our physical traits of East Indian ethnicity, his life will be in greater danger in Trinidad & Tobago. Additionally, if anything were to happen to me or the rest of my family, [REDACTED] would be directly affected through the loss of a family member....

Medical services in Trinidad are 'significantly below U.S. standards,' which makes the likelihood of [REDACTED] receiving adequate medical care wholly unreliable should he contract any of the multitude of new disease his developing body would be exposed to....

9-month-old [REDACTED]'s developing immune system is no match for the countless number of life threatening diseases specific to Trinidad & Tobago's local environment....

My husband and I will particularly face problems finding employment not only because of our training in the United States, but more importantly, because of rampant cronyism in the health care sector....

If we were to return to Trinidad and Tobago, both my husband and I would have to work in order to provide for our four children. As a result, we will be compelled to rely on Trinidad's childcare services that are woefully inadequate....

My inability to find adequate childcare will not be alleviated by relying on my family to look after my children because...my parents are too old for this responsibility.....

In addition to my parents being unable to help us with childcare, my husband's parents also cannot assist us....

*Affidavit of [REDACTED] dated August 29, 2007.*

Dr. [REDACTED], the applicant's U.S. citizen child's pediatrician, further elaborates on the hardships the child would face where he to relocate to Trinidad and Tobago for a two-year period. As Dr. [REDACTED] states,

...As [REDACTED]s [the applicant's child's] pediatrician...I strongly advise against this because as an infant he is very vulnerable to several illnesses in a third world country such as Trinidad and Tobago, many of which can be fatal without the appropriate medical care. In fact, the CIA world fact book reports the 2007 male infant mortality rate in Trinidad...to be 26.15. This is more than quadruple the rate for the United State [sic].... This puts Dominick at a significantly increased risk of death from a variety of causes, if he were required to go to Trinidad.

[REDACTED] has not completed his full immunization series.... Only the basic immunization schedule would be available to [REDACTED] if he were to return to Trinidad, leaving him susceptible to...potentially fatal illnesses....

In Trinidad and Tobago, the unreliable water supply and poor sanitation are associated with an increased risk of diarrheal diseases.... I understand that medical services are extremely poor in Trinidad with a lack of basic supplies such as intravenous fluids and antibiotics which would be required for treatment of conditions such as these....

[REDACTED] has a strong family history of asthma, with his brother and aunt both diagnosed asthmatics. He is thus at significant risk of developing this disease. Environmental factors can trigger and worsen this condition....

...I would strongly advise against [REDACTED] being required to live in Trinidad and Tobago, as his primary and preventive health care would be suboptimal, and he would be placed at a significantly increased risk of developing a number of potentially fatal diseases. Additionally, should he become ill, treatment will be limited and well below US standards....

*Letter from [REDACTED] Lancaster Pediatric Associates, Ltd, dated May 9, 2007.*

[REDACTED] a pediatrician who previously treated children residing in Trinidad and Tobago for numerous years, states the following regarding medical hardships in Trinidad and Tobago for young children:

It is my professional opinion that the medical services in Trinidad are substandard.... Patient care is compromised due to, among other reasons, a lack of adequate nursing, medical and ancillary staff, medicines, pharmacists, medical equipment and health care facilities. Basic necessities such as X-ray machines are outdated and often non-functional. Medical mishaps due to failing equipment

and substandard care are commonplace at the hospitals. There is also an inefficient primary health care and prevention programme leaving residents vulnerable to diseases and subsequent complications to which they would have otherwise not been exposed.

A child is most susceptible to illness in the first few years of life as he or she has not yet developed the immune system of an adult.... It is my opinion that given the current state of the health care system in Trinidad and Tobago, should 5 month old [REDACTED] succumb to any number of childhood illnesses, it is likely that he would receive inadequate treatment due to the aforementioned reasons. This would leave him at risk of complications and even death....

*Letter from [REDACTED], Consultant Pediatrician, Ashford and St. Peter's Hospital, dated April 23, 2007.*

Both the applicant and counsel have provided extensive documentation to corroborate the statements referenced above. In addition, in the Country Specific Information for Trinidad and Tobago, the U.S. Department of State states the following, in pertinent part:

American citizens traveling to or residing in Trinidad and Tobago should avoid large crowds and demonstrations. While non-violent demonstrations occur on occasion, widespread civil disorder is not typical. The downtown area of Port of Spain experienced four bombings in 2005. While no similar incidents have occurred since that time, the perpetrator(s) have not been arrested and their identities and motive remain unknown. Americans living or visiting Port of Spain are advised to exercise caution, especially in crowded urban areas.

Incidents of violent crime have been steadily on the rise on both islands. Visitors to Trinidad and Tobago should exercise caution and good judgment, as in any large urban area, particularly when traveling after dark from Trinidad's Piarco Airport. There have been incidents involving armed robbers trailing arriving passengers from the airport and then accosting them outside the gates of their residences. Areas to avoid in Trinidad include Laventille, Morvant, Sea Lots, South Belmont, scenic rest stops, walking across the Queen's Park Savannah, and downtown Port of Spain (after dark), as tourists are particularly vulnerable to pick pocketing and armed assaults in these locations. Holiday periods, especially Christmas and Carnival, often see an increase in criminal activity.

Violent crimes, including assault, kidnapping for ransom, sexual assault and murder, have involved foreign residents and tourists, including U.S. citizens. The perpetrators of many these crimes have not been arrested.

Burglaries of private residences are common. Robbery is a risk, particularly in urban areas and especially near ATMs and shopping malls. Visitors should avoid

wearing expensive jewelry or displaying large amounts of money in public. One victim was targeted for driving an expensive new car. In some cases, robberies of Americans have turned violent and resulted in injuries after the victim resisted handing over valuables.

We strongly recommend that you obtain comprehensive travel and medical insurance before traveling. Medical care is limited compared to that in the United States. Care at public health facilities is significantly below U.S. standards for treatment of serious injuries and illness, with limited access to supplies and medications. While care at some private facilities is better than at most public health facilities, patients may be expected to prove their ability to pay before assistance is given, even in emergency situations. Patients requiring blood transfusions are expected to arrange for at least the same amount to be donated on their behalf. Physicians and nurses may go on strike, causing serious strain on both public and private medical resources. Ambulance service is extremely limited both in the quality of emergency care and in the availability of vehicles in many parts of the country.

*Country Specific Information-Trinidad and Tobago, U.S. Department of State, Bureau of Consular Affairs, dated April 13, 2007.*

Based on the problematic country conditions in Trinidad and Tobago, the security concerns with respect to U.S. citizens, the substandard health care, and the applicant's immediate family member's own traumatic experiences in Trinidad and Tobago and the ramifications of said events on the child's upbringing and psychological development, the AAO finds that the applicant's U.S. citizen child would experience exceptional hardship were he to accompany the applicant to Trinidad and Tobago for a two-year term.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen child would suffer exceptional hardship if he remained in the United States during the two-year period that the applicant resides in Trinidad and Tobago. As stated by the applicant:

My husband, [REDACTED], also trained on a J-1 clinical visa, and he is thus also subject to the two-year home residency requirement. Therefore, our U.S. citizen child, [REDACTED] would not be able to remain in the U.S. with my husband. My husband and I would need to return to Trinidad and Tobago together. Taking my three other children, who have dependent visas, while leaving [REDACTED] behind in America is not possible since we do not have other family members who could take care of him for two years....

*Supra* at 1.

As the record indicates, the applicant, her husband and three of their children are J visa holders subject to the two-year foreign residency requirement. Such a requirement would leave a young child in the United States

without his parents and siblings. 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 her U.S. citizen child would experience exceptional hardship were he to relocate to Trinidad and Tobago and in the alternative, were he to remain in the United States without the applicant, for the requisite two-year term. As such, upon review of the totality of circumstances in the present case, the AAO finds the evidence in the record establishes that 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 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.