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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

JUN 03 2008

IN RE:



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.

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 record reflects that the applicant, a native of Liberia and a citizen of Lebanon, was admitted to the United States as a J-1 exchange visitor in October 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). The applicant presently seeks a waiver of his two-year residence requirement, based on the claim that his lawful permanent resident spouse, and his U.S. citizen children, born in November 2004 and August 2006, would suffer exceptional hardship if they moved to Lebanon temporarily with the applicant and in the alternative, if they 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 spouse and children would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Lebanon. *Director's Decision*, dated March 7, 2008. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated April 29, 2008; a psychiatric evaluation of the applicant's spouse, dated April 21, 2008; copies of the applicant's spouse's medical records; a Travel Warning for Lebanon, issued by the U.S. Department of State on April 21, 2008; and a copy of a previously issued decision from the AAO. 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 lawful permanent resident spouse and/or U.S. citizen children would experience exceptional hardship if they resided in Lebanon for two years with the applicant. To support this contention, the applicant states the following:

...The war in Lebanon between Israel and Hezbollah, and subsequent deadly confrontations between Hezbollah and Lebanese government forces have resulted in devastation [sic] to the country’s infrastructure and extraordinary hardships to the Lebanese people.

Following the kidnapping of 2 Israeli soldiers in July 2006, Israel attacked Lebanese targets throughout the country, including the only international airport, and has decimated the country’s infrastructure. Countries throughout the world, including the United States, have EVACUATED their citizens from Lebanon, as conditions in Lebanon are worsening.

Most recently, Hezbollah and Lebanese government forces and their supporters have engaged in daily gun battles which have resulted in deaths and further destruction to the country and even increased dangers to its citizens.

Lebanon is a country in ruin. Bridges, roads, buildings and many other structures have been destroyed throughout the country. Food and supplies are in short supply. Due to the bombings, travel is not possible through most of the country. Moreover, all roads leading out of Lebanon have been bombed, making escape by road out of the country nearly impossible. Indeed, no one is traveling to Lebanon, as the country is in the midst of devastation. More than 1,000 Lebanese have already been killed and many thousands more have continued to be displaced from their homes....

Lebanon is a war zone, and certainly NO place for young American children....

Violence against Americans is rampant in Lebanon and my young U.S. citizen children would face grave danger by moving there with me.

The U.S. State Department has continued to warn Americans against traveling to Lebanon for years. Recent increasing violence in the region has prompted the State Department to re-issue a Travel Warning....

Lebanon has a history of harboring terrorists who target Americans. For example, few can forget the killing of more than 200 American Marines in Beirut, the kidnapping of American professors and journalists at or near the American University of Beirut, the hijacking of a TWA plane, and the killing of American Leon Klinghoffer on the Italian Cruise Ship Achille Lauro.

There are numerous terrorist groups that continue to operate in Lebanon that are violently anti-American. Many of such terrorist groups, including Asbat al-Ansar have links to Al-Qaida, which has specifically targeted American interests. Moreover, other terrorist groups such as the Lebanese Hizballah, HAMAS, and the Palestine Islamic Jihad (PIJ) have engaged in increasing acts of violence and threats of violence against Americans....

The Lebanese government has done little to protect Americans or halt the violence....

Should I be forced to return to Lebanon, I would need to purchase a home and begin a new life in Lebanon—a country where the economy is in ruins and employment opportunities are virtually non-existent.

Lebanon's economy has a public debt of nearly \$27 Billion representing 165% of gross domestic product (the fourth highest debt ratio following just Nicaragua, Zambia and Malawi), and the overall economic situation is critical.

Even if I could secure a position, I would be financially unable to purchase a home or properly care for my U.S. citizen young children and wife....

Lebanon is a poor country with limited health resources. Health conditions and facilities in Lebanon are in dire shape, such that there is a real possibility that my young children will face serious health consequences if they are required to relocate to Lebanon.

There are relatively few medical professionals in the entire country (just 1 doctor per 10,000 residents), as well as very poor public hospitals which only have basic health support. Western style medical care is available only to the richest Lebanese who have access to private hospitals.

Diseases such as Hepatitis A and typhoid fever are endemic.

Moreover, even if we were able to find a physician to care for our young children's needs, physicians and hospitals often expect immediate cash payment for services and may even deny service in emergency cases. With any limited income I may receive in Lebanon, I would certainly not be able to afford any type of medical care

for my young U.S. children who will certainly require care during any stay in Lebanon.

My U.S. citizen children will certainly face many additional and severe health risks in Lebanon that they would otherwise not be exposed to in the United States.

My American children may be singled out for persecution [due] to the differing religious beliefs of my wife and I.

I am Druze, and my wife is Muslim. The Druze people in Lebanon are a religious minority (approximately 5.7% of the population), and often persecuted by the majority Muslim population. Since my wife and I represent a mixed religious background, our children may be particularly targeted for persecution due to the continued difficulties religious minorities face in Lebanon....

*Affidavit of* [REDACTED], dated April 3, 2007.

A Travel Warning, issued by the U.S. Department of State, Bureau of Consular Affairs, dated May 13, 2008, states the following, in pertinent part:

This Travel Warning is being issued to update 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 urges that Americans avoid all travel to Lebanon and that American citizens in Lebanon consider carefully the risks of remaining. This supersedes the Travel Warning for Lebanon issued on April 21, 2008.

Violence broke out on May 7, 2008 in the capital, Beirut, when Hizballah militants blocked the road leading to Rafiq Hariri International Airport. As of May 12, 2008, the airport remains inaccessible.

There have been reports that Hizballah fighters continue to push into areas of Lebanon where they have not traditionally been prevalent. In addition to the violence provoked by these incursions, the U.S. remains concerned about the threat of terrorist attacks against Western interests 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.

The U.S. Embassy has suspended non-immigrant visa services as of Monday, May 12, 2008. Normal visa services are expected to resume when conditions improve. The Embassy continues to provide emergency and routine American citizens services.

Currently the American Embassy advises American citizens present in Lebanon to ensure they have an adequate supply of food, water and other essential items and to remain safely inside their homes. Americans are encouraged to review their travel plans following resumption of normal air services.

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.

U.S. citizens traveling to Lebanon or resident in Lebanon should be aware that the U.S. Embassy has limited ability to reach all areas of Lebanon. The Embassy cannot guarantee that Embassy employees can render assistance to U.S. citizens in areas where there is limited government control.

*Travel Warning, U.S. Department of State, Bureau of Consular Affairs, dated May 13, 2008.*

Numerous documents have been provided to support the assertions made by the applicant with respect to Lebanon's problematic political, social and economic conditions and the safety concerns for U.S. citizens residing in Lebanon. As such, based on the U.S. Department of State's position on travel by Americans to Lebanon, the social and political turmoil in Lebanon and anti-American sentiment, the AAO concludes that the applicant's spouse and children would experience exceptional hardship were they to accompany the applicant to Lebanon for a two-year term.

The second step required to obtain a waiver is to establish that the applicant's lawful permanent resident spouse and/or U.S. citizen children would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in Lebanon. As stated by the applicant:

My wife and young children are completely dependent on me for financial support, and due to my children's young ages, my wife is not able to engage in any employment. Hence, without my USA income, they would not have sufficient funds to make both ends meet (Physician salaries in Lebanon are minimal and make it impossible to support a family in the USA).

Due to the extraordinary dangers posed to Lebanese civilians (and especially members of the Druze minority) in a time of near civil war, my life would be in constant danger in Lebanon. In the light of recent incidents sighted [sic] below, there is good chance that I would be targeted for death. My death/injury will be

devastating for my family and will result in extraordinary hardship to my American wife and children.

Due to the substantial visa restrictions/scrutiny of Lebanese prior to entering the USA, there is no guarantee that I will be able to obtain a visa to return to the USA once the two-year period has ended. Indeed, being apart from my wife and children on a permanent basis would result in extraordinary hardships to them.

My wife will suffer from severe emotional distress being separated from me for a period of two years. We were recently married (in May 2003), and a prolonged separation may very well result in my wife's suffering from mental anguish and depression.

My children are in their formative years and will face extraordinary hardship by not being able to establish a relationship with their father...during the first two years of their lives. Being separated from their father and raised as children of a single parent household, they will undoubtedly suffer from extraordinary hardship....

*Supra* at 3-4.

As counsel further elaborates:

[redacted] [the applicant's spouse] was born and raised in Lebanon as the eldest of three children. Her childhood was frequently disrupted by the Lebanese Civil War....

When she was 13, [redacted] was the victim of multiple rapes. Around the age of 16 or 17, she was sexually molested by a family member.... The later assault by a family member resulted in a return of many psychiatric symptoms and the frequency of her nightmares worsened....after this second incident, she told her family about both the family member incident and the previous rapes...the family blamed her for the rapes, minimized the abuse by the family and were upset with her.... [redacted] attempted suicide at around 16-17 by overdosing on medication. She was discovered by her parents and was forced to vomit by her mother. She was not taken for any additional evaluations or treatment.

Around the age of 18, [redacted] matriculated at the American University and began seeing a therapist. This treatment sought to address the extensive symptoms she experienced including panic attacks, anxiety, sleep disorders and loss of appetite. She began taking medication as treatment for her depression.... She is currently taking Cymbalta and recently required an increase in dosage.

earned a BA in nursing and a MA in Public Health.... With this training, she worked as an intensive care unit (ICU) nurse for several years before coming to the United States in that capacity. She developed a skeletal/muscular pain condition related to the sacroiliac joint in her hip and sought various treatments....

...After the birth of her children, she found the persistent skeletal/muscular pain and added responsibilities caused exceptional stress and began to trigger her depression. She left work at that time and has been supported by her husband....

... [REDACTED] has suffered a series of traumatic events which have contributed to a recurrent struggle with Major Depressive Disorder. Her diagnosis and the associated experiences would cause an exceptional hardship if she were forced to separate from her husband during the two-year home residency requirement....

...Her current struggles would only be compounded through emotional hardship of being separated from her husband for an unspecified amount of time, the loss of his emotional and parenting support, and the added strain of caring for their two young children. As a repeat victim of rape and sexual abuse, [REDACTED] displays symptoms of Post Traumatic Stress Disorder. This condition greatly increases her susceptibility to developing depression. Dramatic changes in her environment, such as the absence of her husband and the new responsibilities of running a single-family household, can trigger the depression....

[REDACTED] [the applicant] provides health insurance through his employment, which requires in order to obtain antidepressant medications and continue doctor visits.... If [REDACTED] were to return to Lebanon, his spouse would be left without insurance and thus unable to secure her medications.

... [REDACTED] found it impossible to return to work after her second child was born due to depression, anxiety and skeletal/muscular pain even with her husband's support—it is unlikely that she would be able to assume employment in addition without her husbands [sic] assistance in raising their children and maintaining their home.

[REDACTED] has two young children—the youngest daughter is about 20 months old—who require constant care and supervision. If [REDACTED] were forced to find employment, she would also need to employ childcare... as [REDACTED] and his wife have no family or friends who would be willing and able to take care of the children. Such childcare is extraordinarily expensive, particularly since the children are still too young to attend school....

...M[REDACTED]'s abuse as a child has resulted in a great distrust of childcare providers. She has reported difficulty finding trustworthy and reliable childcare, and yet, in her husband's absence, she would have a greater need for on [sic] childcare and assistance.

..[REDACTED]'s permanent resident spouse will suffer exceptional emotional hardships if [REDACTED]z is forced to return to Lebanon. His spouse is already being treated for depression and adding the pressures of employment to the responsibilities to those of running a single-parent household with two young children would create incredible strain in the household for both [REDACTED]'s spouse and their U.S. citizen young children.... Guilt about the children's distress would worsen [REDACTED]'s depression further.

...The situation in Lebanon is violent and unpredictable. As a professional with known ties to the United States, [REDACTED]z would be at an increased risk of attack from anti-American parties in Lebanon.... If he were killed, his children and spouse would be left emotionally and financially vulnerable in the United States. If he completes his two years in Lebanon, [REDACTED]z would still only be eligible to apply for a U.S. visa...with no guarantee of securing said visa....

*Brief in Support of Appeal, dated April 29, 2008.*

Counsel provides a detailed evaluation from [REDACTED], MD, Forensic Psychiatrist, Case Western Reserve School of Medicine, Department of Psychiatry, dated April 21, 2008, and extensive medical records pertaining to the applicant's spouse, from 2003 to the present, which corroborate the statements made above with respect to her physical and mental health conditions, namely Major Depressive Disorder, Posttraumatic Stress Disorder, Dependent Personality Traits, Lumbago, Pain in the Thoracic Spine, Idiopathic Scoliosis and Lumbosacral Disk Degeneration.

As such, due to the applicant's spouse's documented mental and physical conditions, her fears and anxieties with respect to her spouse's anticipated return to Lebanon, a country of political and social turmoil, in light of the traumas she experienced while residing in Lebanon as a young girl, the applicant's children's need to be with both their mother and father, and the applicant's spouse's and their children's dependence on the applicant for their emotional, psychological and financial well being, the AAO finds that the applicant's departure for a two-year period would cause the applicant's spouse and children emotional, psychological and financial hardship that would be significantly beyond that normally suffered upon the temporary separation of families.

As such, upon review of the totality of the circumstances in the present case, the AAO finds the evidence in the record establishes that the applicant's lawful permanent resident spouse and U.S. citizen children would experience exceptional hardship were they to relocate to Lebanon and in the alternative, were they to remain in the United States without the applicant, for the requisite two-year term.

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.