

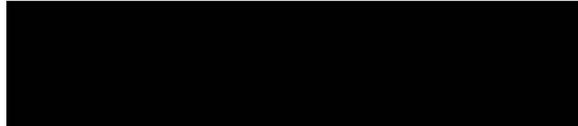
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JUN 26 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:

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. Wiemahn".

Robert P. Wiemahn, 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 and citizen of Lebanon who was admitted to the United States in J-1 nonimmigrant exchange status in February 2002 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 spouse would suffer exceptional hardship if he moved to Lebanon 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 Lebanon.

The 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 Lebanon. *Director's Decision*, dated October 9, 2007. The application was denied accordingly.

In support of the appeal, the applicant submits Form I-290B, Notice of Appeal or Motion and a brief. 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 spouse would experience exceptional hardship if he resided in Lebanon for two years with the applicant. To support this contention, the applicant's spouse states the following:

...Just thinking of the dangers that await us if we are required to stay two consecutive years in a war-torn country like Lebanon makes me loose [sic] my mind. The State Department says no American should go there, I am American....

I have never been to Lebanon, all I know Lebanon's current notorious reputation for sectarian and political violence makes it one of the places that are not safe for Americans and not safe for children. It is now a stage for various conflicts starting with external Palestinian and Israeli conflicts and ending with the inner Christian-Sunni-Shaie conflict. One can never forget that Americans that were held hostages there before. With recent inner and outer conflicts, one cannot overlook the high possibility of Americans being held hostages there again. After a long term of stability, security, and growth for all, it is now a place where an American, or a person of American ideals, may be killed, held hostage, or jailed at any moment.

Internal grievances have been magnified to become the source of international conflict. From the beginning, foreign interventions have consistently exacerbated internal problems. Lebanon's current fragmented political culture is a byproduct of two general features. First, it reflects the traditional forces and political conflicts caused by striking differences in religious beliefs and communal and sectarian loyalists that continue to split the society and reinforce its factional character. Second, and superimposed on these, are new forms of socioeconomic and cultural stress caused by Lebanon's role in the continuing international conflicts in the region.

After many years of stability and months after I married [redacted] [the applicant], Israel attacked Lebanon in July of 2006 and left thousands dead and injured. This attack left wide destruction of buildings, factories, roads, bridges, and other infrastructure causing a permanent health crisis in Lebanon as well as set the country's economy back few years....

As of September 1st 2006, the casualty figures in Lebanon are 1,187 killed and 4,092. However, more civilians are perishing every day because of the hundreds of thousands of unexploded ordnance fired on Lebanon during the final 72 hours of conflict....

In addition to the cycle of violence between the many different sects in Lebanon, the living conditions there pose yet another threat to life. Living conditions such as land minds [sic], unexploded bombs, high number of traffic accidents, pollution

of water, air, and sound, led poisoning [sic], and PCBs are just a few of the factors that expose my family to grief [sic] dangers and possible loss of life.

Considering all of the above, my wife will be in great danger if we had to go back to Lebanon. My wife has always had western thoughts of freedom and liberty, and of equality and equity. She received her education from western schools in Lebanon including the American University in Beirut. She did her residency here in the US and currently working on her fellowship here.

To the terrorist parties in Lebanon, she is a symbol of America, their worst enemy that is eating up their society in corruption. She is a prime target to their hate of our ideas of freedom and liberty and equity and equality. A female that is educated in the U.S., educated to higher levels than majority of men in Lebanon, married to an American who is coming to corrupt the Lebanese society....

Currently, our government advises against traveling to Lebanon to protect the lives of American citizens and their families....

The awful environmental conditions, political climate, lack of infrastructure, and fragile economy in Lebanon, it is highly likely that I will not find a job. Even if I do find one, it will not pay much at all to be able to send money to my disable [sic] brother back in the United States. It is also highly likely that I will be ill without any health insurance coverage. The awful stress of being in that awful environment and not knowing whether you be blown away, shot, kidnapped, or jailed, will make my health conditions beyond severe to a point where I will not be able to function....

Affidavit of [REDACTED]

To corroborate the above, the applicant has provided documentation regarding the problematic political and social situation in Lebanon. A Travel Warning regarding travel to Lebanon by U.S. citizens, issued by the U.S. Department of State, Bureau of Consular Affairs dated May 30, 2008, states, in pertinent part, the following:

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, U.S. Department of State, Bureau of Consular Affairs, dated May 30, 2008.

Based on the political and social turmoil in Lebanon, the applicant's spouse's unfamiliarity with the country and its customs, and the security concerns for U.S. citizens referenced above, the AAO finds that the applicant's U.S. citizen spouse would experience exceptional hardship were he 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 U.S. citizen spouse would suffer exceptional hardship if he remained in the United States during the two-year period that the applicant resides in Lebanon. As stated by the applicant's spouse,

...Right know [sic] and between the two of us, we have more than \$50,000 in student loans. We also have more than \$10,000 in credit cards. Without her [the applicant], I will not be able to pay these loans. I would not have the home, the physical and moral support, nor the ability to go back to school. Without her, I will be forced into bankruptcy. I would not be able to have my allergy medication nor will I be able to see a doctor....

Supra at 4.

The applicant further elaborates on the hardships her spouse would encounter were she to relocate abroad for a two-year period,

...if my husband is in USA, I will be under so much stress that will make me dysfunctional....In addition, I will not be able to pay my loans if I have no job. I have 60,000\$ as loans in the United States. I will be file bankruptcy. This will have impact not only on me but on my husband also. We will have no medical insurance. My husband is maintained on life long treatment for asthma and allergy. This will drastically affect his heath.

...if he stays in the USA during my two continuous years, he will be suffering of several, physical, mental and financial loss. I cannot stand to think that I am going to be away and unable to provide any kind of assistance for him while he suffers. He had lost more than 20 pounds. He is not sleeping well. He is depressed not only form [sic] my point of view but also according to his physician. On the other hand, he is denying this in order to keep our life going on. One can say that when we married he should have considered such a condition. Yes, that is true but the whole situation changed with war in Lebanon. The timing was exactly 2 month [sic] after our marriage in April 2006 and again this year, in fact it is going on at this very moment. He is emotionally devastated just thinking of the danger that I am going to be exposed to. This will directly and indirectly affect him and his family around him....

Affidavit of [REDACTED].

To corroborate the applicant's statements regarding her husband, counsel provides an evaluation of the applicant's spouse from [REDACTED], MD, dated July 2, 2007. Dr. [REDACTED] concludes as follows:

...Mr. [REDACTED] [the applicant's spouse]...has been under my care for the past few months. Initially, he presented to me with approximately 20 pounds weight loss over a period of 6 months. He has been in a depressed mood and he finds it harder to concentrate on simple tasks....

Based on the above history and physical examination, [REDACTED] was diagnosed with severe Major Depression. Mr. [REDACTED] is currently not suicidal, yet he is at increased risk of suicide if his condition further deteriorates....

With a diagnosis of Major Depression and with [REDACTED]'s high-risk profile, I started the complex multidisciplinary approach.

1-Patient education: I explained to him, in details, his conditions and how we are going to approach his depressive state. He was given handouts and brochures and how to deal with it.

2-Behavioral an dietary Modification in addition to stress relieving techniques and light therapy....

3-Psychological counseling and marriage counseling.

4-Pharmacotherapy: I started [REDACTED] on Paxil.

[REDACTED] is dependent on his wife to maintain his health insurance coverage....Thus, his separation from his spouse will have a negative impact on his health progress with all of the risk factors that I mentioned previously.

The roles of the partner and family support are critical in [REDACTED]'s treatment. A stable marital relationship will help him to adapt better....

Evaluation from [REDACTED], Tristate Urgent Care, dated July 2, 2007.

Based on the turmoil in Lebanon, as confirmed by the U.S. Department of State, the applicant's spouse's documented mental health issues, his fears and anxieties with respect to his spouse's anticipated return to Lebanon for a two-year period and the financial hardship he would face due to the applicant's absence, the AAO finds that the hardship the applicant's U.S. citizen spouse would suffer would go significantly beyond that normally suffered upon the temporary separation of families.

The AAO finds that the applicant has established that her U.S. citizen spouse would experience exceptional hardship were he to reside in Lebanon, 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 the hardship the applicant's spouse 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.