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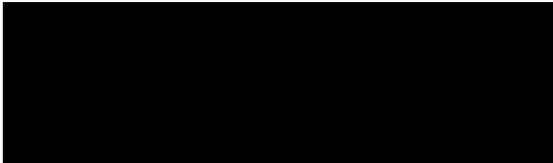
U.S. Department of Homeland Security
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FILE:

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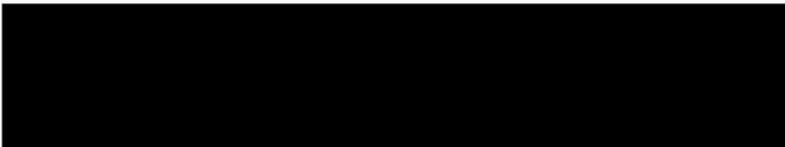
Date: MAR 24 2008

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.

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 and citizen of Pakistan who was admitted to the United States to participate in graduate medical training in June 2002. 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, and her U.S. citizen children born in January 2005 and August 2007, would suffer exceptional hardship if they moved to Pakistan temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled her two-year foreign residence requirement in Pakistan.

The director determined that the applicant failed to establish that her spouse and/or children would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Pakistan. *Director's Decision*, dated June 28, 2007. The application was denied accordingly.

In support of the appeal, the applicant provides a statement, dated August 17, 2007, and evidence of her second child's, [REDACTED], U.S. birth on August 11, 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(I): And provided further, That, except in the case of an alien described in clause (iii), the Attorney General (Secretary) may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

In *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals stated that, "Therefore, it must first be determined whether or not such hardship would occur as the consequence of her accompanying him abroad, which would be the normal course of action to avoid separation. The mere election by the spouse to remain in the United States, absent such determination, is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed. Further, even though it is established that the requisite hardship would occur abroad, it must also be shown that the spouse would suffer as the result of having to remain in the United States. Temporary separation, even though abnormal, is a problem many families face in life and, in and of itself, does not represent exceptional hardship as contemplated by section 212(e), supra."

In *Keh Tong Chen v. Attorney General of the United States*, 546 F. Supp. 1060, 1064 (D.D.C. 1982), the U.S. District Court, District of Columbia stated that:

Courts deciding [section] 212(e) cases have consistently emphasized the Congressional determination that it is detrimental to the purposes of the program and to the national interests of the countries concerned to apply a lenient policy in the adjudication of waivers including cases where marriage occurring in the United States, or the birth of a child or children, is used to support the contention that the exchange alien's departure from his country would cause personal hardship. Courts have effectuated Congressional intent by declining to find exceptional hardship unless the degree of hardship expected was greater than the anxiety, loneliness, and altered financial circumstances ordinarily anticipated from a two-year sojourn abroad." (Quotations and citations omitted).

The first step required to obtain a waiver is to establish that the applicant's spouse and/or children would experience exceptional hardship if they resided in Pakistan for two years with the applicant. To support the contention that her children would face exceptional hardship in Pakistan, the applicant states the following:

[redacted] [the applicant's spouse] belongs to a minority religious sect in Pakistan, called Shiite, that is often the target of violent attacks. I belong to the majority sect, called Sunni, which makes ours a mixed marriage. This literally makes my husband and child outcasts in Pakistani society, which happens to be very unforgiving, even to innocent children. It is considered unacceptable to most members of both sects to marry outside of each sect—those who do are harassed and considered outcasts. Raising [redacted] [the applicant's daughter] ¹ in that environment would pose an extreme emotional burden on her, as she will be far too young to understand why her surrounding community will treat her badly....

Pakistan is a poor state, with a wide margin between the haves and have-nots. Doctors, though well respected, do not in actuality make a lot of money. However, doctors are perceived to be wealthy, especially those trained in the U.S. Their perceived affluent status, besides their affiliations with a particular sect of society, makes them an easy target of violence. In recent years, there have been many reports of doctors being murdered, and several thousand have been targeted....

If my family were forced to return to Pakistan, because my husband and I are both prominent physicians, and we have been away for over 6 years, we will be carefully watched from the day we land in the country. Our lives and the lives of our child will be under constantly threat. In fact, our family will be doubly targeted because there are two physicians to target. [redacted] will be at great risk for kidnapping for ransom as well, and this is far too great of a danger to risk....

There is nothing I can do to protect my family, especially [redacted], from the violence that she will inevitably experience in Pakistan. I fear that she will be particularly targeted due to her American citizenship. The people in our area know that we have lived in the United States and that [redacted] was born there. After spending almost so many years in the United States I myself, am no longer considered to be Pakistani anymore. [redacted] and [redacted] will be targets of hate crimes due to their nationality, and I may be targeted due to my association with them and the United States.... If something were to happen to [redacted], my husband and I would be devastated. If something were to happen to me or my husband,

At the time the Form I-612 application was filed, in March 2007, the applicant had one U.S. citizen child, [redacted] born in January 2005. Prior to the appeal submission in August 2007, the applicant's second U.S. citizen child, [redacted] was born. For this reason, in some instances in the record, the applicant references hardships only to [redacted]

██████████ would be left destitute with either one struggling parent or no parents at all. Either scenario will cause irreparable psychological harm....

██████████ has been hospitalized twice due to reflux disease and severe dehydration requiring emergency medical care. She has been seen and evaluated by medical specialists and her treatment is ongoing....

...there is a high incident of pollution in Pakistan. The water and food in Pakistan is of poor quality. There are many deadly communicable and water born diseases.... Major health threats are related to food and water born illnesses because of the lack of good sanitary conditions in handling and preparing the food, poor water supplies and poor standards of living.... Because ██████████ has spent her time in the United States since birth, she has not developed the immunities to fight such diseases, making them much more vulnerable. What's worse is that Pakistan's child health care services are not able to address the large number of children affected by contaminated water, food, and air.... My daughter falls into the age range of 0 to 5 years old that 70% of deaths were reported due to easily preventable ailments. I am very worried that my daughter will be easily susceptible to such diseases because she has not built up any immunity while living in the United States, and more so, I am worried that she will not receive adequate health care to treat any diseases she may contact. I fear that her health will be in danger if she were to return to Pakistan with me. I am very concerned that Shanze will not be able to withstand the stress of the poor environmental conditions in Pakistan, and that she will not have access to adequate medical care....

If ██████████ is forced to move to Pakistan, she will be making the move during crucial years of language development. Language acquisition is most rapid in early stages of life, and if our daughter were to move to Pakistan, they would be deprived of the opportunity to undergo the natural process of language acquisition in their native America....

Affidavit of ██████████, dated February 21, 2007.

In a statement provided by the applicant in August 2007, she further elaborates on the hardships her two children would face in Pakistan:

...I gave birth to our second child, ██████████, on August 11th, 2007 in the city of Rochester, MN.... My first born ██████████, will be almost 3 years old and our second child will be a little over 11 weeks old when I am required to leave for 2 years... ██████████, who was born at 38-week gestation and yet she measured 34 weeks. According to our obstetrician this is Intra-uterine growth retardation (IUGR) and therefore I had to undergo induced labor on a semi-urgent basis. ██████████'s birth weight was 2.47 kgs, which places her in the third

percentile for children in her age group.... Not only this but her pediatrician has also raised concern for possible congenital hip dislocation, which is in the process of being further worked up at the Mayo clinic in Rochester, MN. The healthcare system in Pakistan is grossly incapable of providing for the special needs of [REDACTED]..she will be a little over 11 weeks old when it is time for me to leave for Pakistan....

Statement from [REDACTED] dated August 17, 2007.

Numerous documents have been provided to support the assertions made by the applicant with respect to the problematic social, political and religious situation and the health and safety concerns for U.S. citizens residing in Pakistan. In addition, the AAO notes that the U.S. Department of State references the following, in pertinent part, regarding travel to Pakistan:

A number of extremist groups within Pakistan continue to target American and other Western interests, high-level Pakistani government officials, as well as members of minority indigenous and religious groups. Terrorists and their sympathizers have demonstrated their willingness and capability to attack targets where Americans are known to congregate or visit. Terrorist actions may include, but are not limited to, suicide operations, bombing -- including vehicle-borne explosives and improvised explosive devices -- assassinations, carjacking, assault or kidnapping. American fast food restaurants and other companies in Karachi were bombed in late 2005, resulting in several deaths and multiple injuries. None of the casualties were Americans. On March 2, 2006, an American diplomat, his locally employed driver, and three others were killed when a suicide bomber detonated a car packed with explosives in front of the U.S. Consulate in Karachi. Fifty-two others were wounded in the attack. Occasional sectarian violence has resulted in fatal bomb attacks in Karachi, Peshawar, Quetta, Lahore, and other Pakistani cities in 2006. Rallies, demonstrations, and processions occur from time to time throughout Pakistan on very short notice and have often taken on an anti-American or anti-Western character. Because of the possibility of violence, Americans are urged to avoid all public places of worship and areas where Westerners are known to congregate.

Karachi and the southern parts of Punjab Province have experienced protracted political or sectarian violence that poses a potential danger to American travelers. During the Islamic (Shi'a) religious observance of Moharram, rivalries and hostilities often increase. Family feuds are frequently fatal and may be followed by retaliation.

It is best to avoid public transportation. For security reasons, U.S. Mission personnel are prohibited from using taxis or buses. (See the Traffic Safety and Road Conditions section below.)

Women are advised to dress conservatively, with arms and legs covered, and avoid walking around alone. It is unwise for anyone to travel on the streets late at night. Visitors to Pakistan should attempt to maintain a low profile, blend in, be aware of their surroundings, and seek security with their family or sponsoring organization.

Crime is a serious concern for foreigners throughout Pakistan. Carjacking, armed robberies, house invasions, and other violent crimes occur in many major urban areas. Petty crime, especially theft of personal property, is common. American travelers to Pakistan are strongly advised to avoid traveling by taxi and other forms of public transportation, and have members of their host organizations or families meet them at the airport.

Adequate medical care is available in major Pakistani cities, but is limited in rural areas. Facilities in the cities vary in level and range of services, resources, and cleanliness, and Americans may find them below U.S. standards; facilities in rural areas are consistently below U.S. standards. Medical facilities require prepayment and do not accept credit cards.

Water is not potable anywhere in Pakistan and sanitation in many restaurants is inadequate. Stomach illnesses are common and can be life-threatening. Effective emergency response to personal injury and illness is virtually non-existent in Pakistan. Ambulances are few and are not necessarily staffed by medical personnel. Any emergency case should be transported immediately to recommended emergency receiving rooms. Many American-brand medications are not widely available, but generic brands from well-known pharmaceuticals usually are. The quality of the locally-produced medications is not known.

Country Specific Information-Pakistan, *U.S. Department of State, Bureau of Consular Affairs*, dated September 27, 2007.

In addition, a recently posted Travel Warning, issued by the U.S. Department of State, Bureau of Consular Affairs, states the following:

This Travel Warning updates information on security incidents and reminds U.S. citizens of ongoing security concerns in Pakistan. This Travel Warning supersedes the Travel Warning dated December 5, 2006.

The Department of State continues to warn U.S. citizens against non-essential travel to Pakistan in light of the threat of terrorist activity.

The presence of Al-Qaida, Taliban elements, and indigenous sectarian groups poses a potential danger to American citizens, especially along the porous border with Afghanistan. Continuing tensions in the Middle East also increase the possibility of violence against Westerners in Pakistan. Terrorists and their sympathizers have demonstrated their willingness and capability to attack targets where Americans are known to congregate or visit, such as hotels, clubs and restaurants, places of worship, schools, or outdoor recreation events. American fast food restaurants and other companies in Karachi were bombed in late 2005, resulting in several deaths and multiple injuries among Pakistani employees and customers. On March 2, 2006, an American diplomat, his locally employed driver, and three others were killed when a suicide bomber detonated a car packed with explosives in front of the U.S. Consulate in Karachi. Fifty-two others were wounded.

Fatal bomb attacks have occurred in Islamabad, Karachi, Peshawar, Quetta, Lahore, and other Pakistani cities in 2006 and 2007. Some of the attacks have occurred outside major hotels, market areas and other locations frequented by Americans. Other recent targets have included Pakistani government officials and buildings, and international NGOs.

U.S. citizens who travel to or remain in Pakistan despite this Travel Warning are encouraged to register with the Embassy in Islamabad or the Consulates in Karachi, Lahore, or Peshawar. This registration can be completed online through the Department of State's travel registration website: <https://travelregistration.state.gov>. Alternatively, Americans without Internet access should contact the nearest Embassy or Consulate for information on registering in person. Registration enables citizens to obtain updated information on travel and security within Pakistan via the emergency alert system (warden network). Americans in country should take appropriate individual precautions to ensure their safety and security. These measures include maintaining good situational awareness, avoiding crowds and demonstrations and keeping a low profile. Americans should avoid setting patterns by varying times and routes for all required travel. Americans should ensure that their travel documents and visas are valid at all times.

From time to time, any post in Pakistan may temporarily suspend public services for security reasons. Official Americans may be prohibited from traveling to certain areas of Pakistan due to security concerns. Therefore, they may not be able to render immediate service to American citizens in distress. The websites

of the Embassy and Consulates are regularly updated with the latest information on more specific travel restrictions and conditions.

Travel Warning, U.S. Department of State, Bureau of Consular Affairs, dated September 21, 2007.

Based on the U.S. Department of State's position on travel by Americans to Pakistan, the social, religious, and political turmoil in Pakistan, anti-American sentiment, and the concerns outlined above regarding the language barrier, substandard health care and the environment, the AAO finds that the applicant's U.S. citizen children would experience exceptional hardship were they to accompany the applicant to Pakistan for a two-year term.

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

...There is no doubt that breast-feeding and physical bonding with the child's mother has long lasting positive effect on physical and emotional development and the overall well-being of an individual. It is recommended by pediatricians all over the world that infants should be breast-fed for at least 6 months of life, if not more. This is especially true in [redacted]s [the applicant's daughter's] case due to her small size and vulnerable immune system. Formula preparations rank as a poor second choice.... I am pleading for the rights of an infant to the physical presence of its mother when I say that my leaving for my home country will bring an exceptional hardship to this family and above all, [redacted] If willingly depriving an infant of its mother does not amount to cruelty and hardship to that child...then I humbly beg of USCIS to tell me what does.

USCIS also made due note that if I am to depart the United States and my husband is to care for our children, this would not be outside the norms of the society. By most standards this is not considered a social norm and families especially with such little children should stay together. A family is made up a father and a mother, and each parent makes unique and indispensable contributions to the child's development. There is myriad evidence in scientific literature to suggest that children raised by single parents do worse in school and are more likely to suffer from childhood depression.... Pakistan is not a country that neighbors the United States. It literally is on the other side of the world and it would be nothing short of exceptionally difficult for the family to visit on a regular basis....

Supra at 1-2.

[REDACTED] Assistant Professor, West Virginia University School of Medicine, the applicant's daughter's physician, elaborates on the statements made by the applicant. As [REDACTED] states,

...a child at this age needs the time and attention of both parents for growth and psychological development. Separation from either parent can have adverse effects on her growth. It would therefore be my professional opinion that [REDACTED] [the applicant's daughter] stay in America with both her parents....

Letter from [REDACTED] Assistant Professor, West Virginia School of Medicine, dated December 29, 2006.

The AAO concurs with the applicant that separating two young children from their mother, taking into account that the applicant is still breast-feeding one of the children, would constitute exceptional emotional, psychological and physical hardship to the applicant's children.

The AAO thus finds that the applicant has established that her children would experience exceptional hardship were they to relocate to Pakistan and in the alternative, were they 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 concludes that the evidence in the record establishes the hardship the applicant's children 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.²

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.

² As a finding has been made by the AAO that exceptional hardship to the applicant's two U.S. citizen children exists, there is no need for the AAO to analyze whether exceptional hardship to the applicant's U.S. citizen spouse has been established.