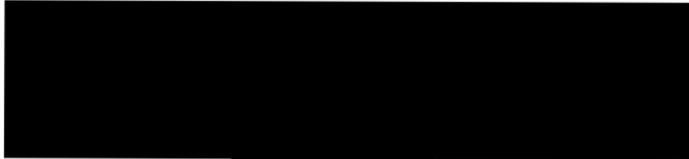




U.S. Citizenship
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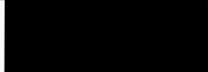
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

MAR 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State (DOS), Waiver Review Division (WRD).

The record reflects that the applicant is a native and citizen of Syria who entered the United States in J-1 nonimmigrant exchange status in July 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 foreign residence requirement, based on the claim that his U.S. citizen child, born in August 2006, would suffer exceptional hardship if she moved to Syria temporarily with the applicant and in the alternative, if she remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Syria.

The director determined that the applicant failed to establish that his child would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Syria. *Director's Decision*, dated August 11, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated October 5, 2007 and evidence that the applicant's spouse has filed an appeal on October 5, 2007, based on a denial of her Form I-612 application. 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 child would experience exceptional hardship if she resided in Syria for two years with the applicant. To support this contention, the applicant states the following:

...In Syria, there are many deadly communicable and water borne diseases.... These diseases become easily communicable in crowded public institutions.... Thousands of children die each year from these communicable, yet preventable diseases. Children, like my daughter who were born in developed Western nations like the United States and Europe, typically suffer serious illnesses because they do not have a natural immunity to these infections....

Furthermore, critical vaccinations are not available.... This would cause an interruption in my daughters' vaccinations that could harm her severely throughout the rest of her life....

I will not make very much money in Syria.... If something were to happen to [REDACTED]'s [the applicant's child's] health, we would be a loss to treat her....

...Having been exposed only to English for the first two years of her life in the United States, she will suddenly find herself in Syria and will need to learn Arabic for two years.... She will most certainly be behind the other children in her school when she returns to the States given such significant transitions in the early and most critical period of her language development.... In addition, the educational system in Syria is very poor as compared to that in the United States. The fact that my daughter will have to undergo so many changes in terms of language development, geographic environment, and varying degrees and standards of educational instruction at such a young age will have a negative impact on her psychological development and result in possibly life-long consequences....

In addition, since the Syrian community would easily identify my daughter as an American, she would most certainly be ostracized by the other children because of her American identity. Children in Syria are constantly inundated with negative images about the United States and Americans from the mass media, schools, and parents. It is likely that my daughter would be taunted because of her American identity, which would cause great psychological damage.... Living in an environment where demonization of the U.S. is pervasive will cause irreparable harm on my daughter's sense of self and identity.

Syria is included on the U.S. Departments of State's List of State Sponsors of Terrorism. A number of terrorist groups that have offices in Syria oppose U.S. policies in the Middle East. The anti-American sentiment in Syria, while already prevalent due to the Arab-Israeli conflict, escalated dramatically after the United States' recent involvement in the Iraq War. Most of the Syrian population is

extremely sympathetic to the Palestinians and views the United States as heavily biased in favor of Israel. Furthermore, the U.S. invasion of Iraq is widely viewed as a completely unjustified act of aggression against other Arab-Muslims, and American's motives are perceived to be driven by financial considerations, as well as an effort to control the Arab world and strengthen Israel....

My wife and I are part of the Christian minority.... Because we will be associated with the United States...and because it will be easily seen that we will not attend mosque, we will be doubly in danger for being associated with the US and for being Christian.... My daughter will not be safe, and it will be simply impossible for us to protect her every minute of every day for two years in such an environment.

I am particularly worried about the prospect of my daughter being kidnapped either for ransom or for political purposes. Hezbollah, the Syrian-supported terrorist network, frequently engages in kidnapping to pursue its political aims.... Because US embassy officials and diplomats are safe-guarded through extensive security, terrorist groups often aim their violent efforts at 'soft targets', meaning civilians, to make their point. As an American-associated Christian family living in a territory where terrorist groups operate freely, it is highly probable that my daughter might be kidnapped or even killed....

...The people of Syria live under an extremely oppressive regime and have no real civil liberties.... One cannot speak one's own mind in Syria without fearing that an informant will tell the authorities, resulting in arrest and most likely torture. One cannot voice one's opinion if it is not in line with the government's position. To do so is to risk arrest, torture, disappearance and even death.

My daughter should not be exposed to this radically oppressive environment. I do not want my daughter to have to learn to restrain herself from stating what she feels or believes....

...Syria has a system of social medicine in which most of the hospitals are owned by the government....my only option of employment, if I am fortunate enough to obtain one, is a government job which is very poorly paid....

In addition, it will be extremely difficult for me to find a job in Syria. There are very few opportunities for physicians and other medical professionals to make a living, thus, competition for a job as a physician is high.... I fear that my period of study and work in the United States will make it even more difficult to find a job because of the prevailing hatred of the United States and Christians amongst many Syrians....

Affidavit of [REDACTED], dated May 25, 2007.

Counsel has provided numerous articles about country conditions and anti-American sentiment in Syria to corroborate the above statements. In addition, an updated Travel Warning was issued on September 18, 2007 with respect to Syria. As stated by the Bureau of Consular Affairs, U.S. Department of State,

This Travel Warning alerts U.S. citizens to the ongoing safety and security concerns in Syria. Travelers are advised to thoroughly consider the risks before travel to Syria and to take adequate precautions to ensure their safety if traveling to Syria. This supersedes the Travel Warning issued on November 13, 2006.

On September 12, 2006, the U.S. Embassy in Damascus was attacked by assailants using improvised explosives, gunfire, and two vehicles laden with explosives. This attack underscores the danger posed by the continued presence of terrorist groups in Syria. The Embassy is working with the Syrian authorities to address these threats and the security issues raised by the attack on the Embassy. While the authorities have taken measures since then to crack down on local extremists, self-contained groups with no links to external terrorist organizations will remain inherently difficult to detect and disrupt....

Travel Warning-Syria, Bureau of Consular Affairs, U.S. Department of State, dated September 18, 2007.

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

The second step required to obtain a waiver is to establish that the applicant's child would suffer exceptional hardship if she remained in the United States during the two-year period that the applicant resides in Syria. The applicant asserts that it would be impossible for the applicant's child to remain in the United States for two years while the applicant returned to Syria because no one would be available to care for his child. As stated by the applicant,

...I obtained a J-1 visa in 2002 in order to pursue graduate medical training in the US.... I am subject to the two-year foreign residency requirement.... My wife, [REDACTED], is also on a J-1 visa and is similarly subject to the two year foreign residency requirement....

Supra at 1

As the record indicates, both the applicant and his wife are J visa holders subject to the two-year home residency requirement; neither one has had the requirement waived at this time. As such, the AAO concurs with counsel that the foreign-residency requirement that both the applicant and his spouse must comply with

would leave their young child in the United States without her parents. This situation would clearly constitute exceptional hardship to the applicant's child if she remained in the United States.

The record, reviewed in its entirety, supports a finding that the applicant's child will face exceptional hardship if the applicant's waiver request is denied. The burden of proving eligibility for a waiver under section 212(e) of the Act, rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that in the present case, the applicant has met his burden. The appeal will therefore be sustained. The AAO notes, however, that a waiver under section 212(e) of the Act may not be approved without the favorable recommendation of the DOS. Accordingly, this matter will be remanded to the director so that she may request a DOS recommendation under 22 C.F.R. § 514. If the DOS recommends that the application be approved, the secretary may waive the two-year foreign residence requirement if admission of the applicant to the United States is found to be in the public interest. However, if the DOS recommends that the application not be approved, the application will be re-denied with no appeal.

ORDER: The matter will be remanded to the Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State, Waiver Review Division.