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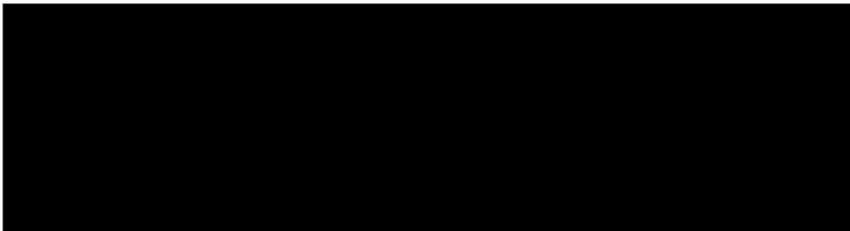


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JAN 14 2009

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:



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 "John F. Grissom".

John F. Grissom, Acting 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, a native and citizen of Pakistan, was admitted to the United States as a J-1 exchange visitor in July 1994 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 spouse and child, born in August 1999, 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 his two-year foreign residence requirement in Pakistan.

The director determined that the applicant failed to establish that his U.S. citizen spouse and/or child would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Pakistan. *Director's Decision*, dated June 6, 2008. The application was denied accordingly.

Counsel for the applicant filed the Form I-290B, Notice of Appeal to the Administrative Appeals Unit (Form I-290B) on July 3, 2008. On the Form I-290B, counsel briefly stated the reasons for the appeal, and requested 30 days to submit a brief and/or additional evidence to the AAO. On December 15, 2008, the AAO sent a fax to counsel, stating that to date, the AAO had no record that any further evidence or brief was ever received, and requesting that counsel submit a copy of the brief and/or evidence to the AAO, along with evidence that it was originally filed with the AAO within the 30 day period requested, within five business days. No information was sent by counsel and/or the applicant in response to this fax and thus, the record is considered complete.

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 and/or child would experience exceptional hardship if they resided in Pakistan for two years with the applicant. To support this contention, the applicant’s spouse summarizes the hardships she and her child would face in Pakistan:

I am currently enrolled in an Associates Degree Program in Fine Arts at Corcoran School of Art and Design in Washington, DC and I plan to also pursue my Bachelor of Fine Arts upon completion of my current program.

I would not be able to maintain my current studies, or pursue further studies if I were to move to Pakistan....

I would not be able to find productive employment in Pakistan as it is hard for females to find meaningful employment there and also I do not have any skills that would be valuable in the local economy.

Our son, who was born in the United States of America, has only been outside the United States two or three times in his life and it will be very hard for him to adapt to living in another completely foreign culture, nor could he tolerate the local hygiene standards, healthcare services or living conditions.

I am in perfect health at the moment, and am very worried that if I were to move to Pakistan I would not be able to maintain the excellent healthcare and dental care that I receive in the U.S. I know first-hand that Pakistan is not the clean, sanitary place that the United States is, and I could eat very little of the food, especially meats and dairy

products, in Pakistan. The same applies to our son who would be exposed to diseases like tuberculosis, cholera, dysentery, malaria, chicken pox, typhoid fever, hepatitis and other water borne diseases, if we were to move to Pakistan.

We would also be exposed to the current turmoil in Pakistan which will have detrimental effects on my son's and my own mental health.

Pakistan's current political situation is not conducive for our family to move there. With the current security situation there, I would not feel safe for myself, my son and my husband [the applicant] to move to Pakistan....

Anti-American sentiment has been on the increase in Pakistan in recent years, and I am worried that we could be targeted because of our presence in the United States of America for the past 14 years, which has 'Americanized' us to a great extent in terms of our dress, behavior, mannerisms, culture and beliefs.

Even though my husband is Pakistani, he has been in the United States for so many years that he would also be regarded as American if he were to move back to Pakistan, particularly if I accompany him, and therefore could also be the target of anti-American sentiment....

*Affidavit of* [REDACTED], dated January 26, 2008.

Counsel has provided extensive documentation regarding the problematic country conditions in Pakistan. In addition, a letter in support has been provided by [REDACTED] As [REDACTED] attests,

I am a Pakistani physician who is practicing in the United Kingdom. Before I came to UK, I was a resident in the department of Medicine at Mayo Hospital, Lahore, Pakistan. There were a number of factors that played a major role in my decision to leave my home country and adopt UK as my new homeland.

The situation in Pakistan is tenuous at best. The political atmosphere is very unstable and the situation of law and order is horrific. There have been a number of abductions of physicians in the past few years, which has made the medical community very concerned. A number of physicians have written letters to the authorities, but everything seems to fall on deaf ears. I really believe that the social structure is so badly broken that the government does not know where to begin. There are gangs of dacoits who target physicians for ransom. There have been armed robberies in physicians' offices. There are serious concerns amongst physicians about safety in Pakistan, especially for physicians trained in the United States of America, who are continually a target of people who hate the West. If [REDACTED] [the applicant] has to go

to Pakistan, he would not only jeopardize his professional career, his life may be endangered.

The professional atmosphere in Pakistan is in chaos. I practiced in Pakistan for nine years after graduating from medical school, and my financial burden became unbearable. I had to rely on my father to support me, as the salary was not enough to support my wife, and two kids. Physicians' salaries are not enough to support a family. Children's education is also a real concern. Public school system is in shambles. The quality of education in these schools is poor. Private schools are extreme expensive, and it is really impossible to send children to private schools in the salary that physicians are earning....

*Letter from* [REDACTED] dated December 23, 2004.

Finally, the AAO notes that a Travel Warning, issued by the U.S. Department of State, Bureau of Consular Affairs, dated November 21, 2008, states, in pertinent part, the following:

The Department of State warns U.S. citizens against non-essential travel to Pakistan in light of the threat of terrorist activity. This replaces the Travel Warning dated October 1, 2008, and updates information on security incidents, notes the temporary relocation of some employees from the US Consulate in Peshawar to Islamabad, and reminds U.S. citizens of ongoing security concerns in Pakistan.

The presence of Al-Qaida, Taliban elements, and indigenous sectarian groups poses a potential danger to American citizens, especially in the western border regions of Pakistan. 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. U.S. Government personnel are not permitted to stay at or frequent major hotels in Islamabad, Karachi, Lahore and Peshawar. Government personnel have also been advised to restrict the number and frequency of trips to public markets, and to avoid public restaurants in Islamabad, Karachi, and Peshawar.

*Travel Warning, U.S. Department of State, Bureau of Consular Affairs, dated November 21, 2008.*

Based on the documented social, political and economic turmoil in Pakistan, violence against physicians, anti-American sentiment and the emotional and psychological ramifications of such sentiments on a young, U.S. born child and the U.S. Department of State's position on travel to Pakistan by U.S. citizens, the AAO finds that the applicant's U.S. citizen spouse and child would experience exceptional hardship were they to accompany the applicant to Pakistan for a two-year period.

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

I am currently a student at the Corcoran School of Art and design in Washington, DC and rely on my husband's [the applicant's] income to pay my tuition fee.

I do not work for my husband's Practice, nor am I employed elsewhere, and currently I have no earnings of my own.

If [the applicant] were to leave the United States, I would not be able to continue to pay our mortgage or meet our living expenses.

We do not have any major savings.... If [the applicant] were to go to Pakistan, that would deplete our savings quickly, in less than a month and we would have a high negative cash flow....

I would not be able to maintain my current studies, or pursue further studies if... [the applicant] were not here to help me pay for my studies.

I would also not be able to pay for our son's education.... If [the applicant] were to move to Pakistan alone, it would result in extreme hardship for our son to live without his father for an extended period of time....

If my husband were to move to Pakistan alone, I am convinced that he would put his own life at risk.

Finally, I would like to describe the close bond that my husband and I have developed after twelve years of marriage and sharing most of our adult lives with each other. [the applicant] and I essentially grew up together as we went through hard times together during his surgical training which was a testing time, but also brought us extremely close to each other. We dearly love each other and share values and beliefs. We are very close to each other as a family. He is a very loving husband for me and an affectionate father for our son. He means the world to our son who looks up to his father as his role model as one day, our son would also strive to be a heart surgeon like his father. He is the person who gets me through any and all bad experiences and we are able to talk to each other about everything. We plan our lives and dreams together, both professionally and personally, and spend all our free time with each other.

*Supra* at 2-3.

Based on the turmoil in Pakistan, as confirmed by the U.S. Department of State, the fears and anxieties with respect to the applicant's safety and well-being were he to reside in Pakistan and the applicant's spouse's and child's dependence on the applicant for their own emotional and financial well being, the AAO finds that the applicant's departure for a two-year period would cause the applicant's spouse and child emotional, psychological and financial hardship that would be significantly beyond that normally suffered upon the temporary separation of families. Moreover, the record indicates that the applicant's spouse is integrated into the U.S lifestyle and educational system; she is currently pursuing her college degree while relying on the applicant to support her emotionally and financially. The Board of Immigration Appeals (BIA) found that a U.S. citizen spouse who was in pursuit of an advanced degree and was thus completely dependent on her spouse for support would encounter exceptional hardship if her spouse's waiver request was not granted. *Matter of Chong*, 12 I&N Dec. 793, Interim Decision (BIA 1968). The AAO finds *Matter of Chong* to be persuasive in this case due to the similar fact pattern. Were the applicant's waiver request denied, his spouse would have to cease the pursuit of her studies as she would need to find employment to care for herself and her child, all without the continued support of her husband. Such a disruption at this stage of her education would be significant as to constitute exceptional hardship.

The AAO thus concludes that the applicant has established that his U.S. citizen spouse and child 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.

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 he 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.