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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H3

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **AUG 25 2010**

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:
[Redacted]

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.

[Redacted]

Chief, Administrative Appeals Office

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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 and citizen of [REDACTED] obtained J-1 nonimmigrant exchange status in 2007 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 June 2009, would suffer exceptional hardship if they moved to Syria temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Syria.

The director determined that the applicant failed to establish that a qualifying relative would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Syria. *Director's Decision*, dated May 11, 2010. The application was denied accordingly.

In support of the appeal, counsel for the applicant submits a brief and referenced documentation. The entire record was reviewed and considered in rendering this decision.

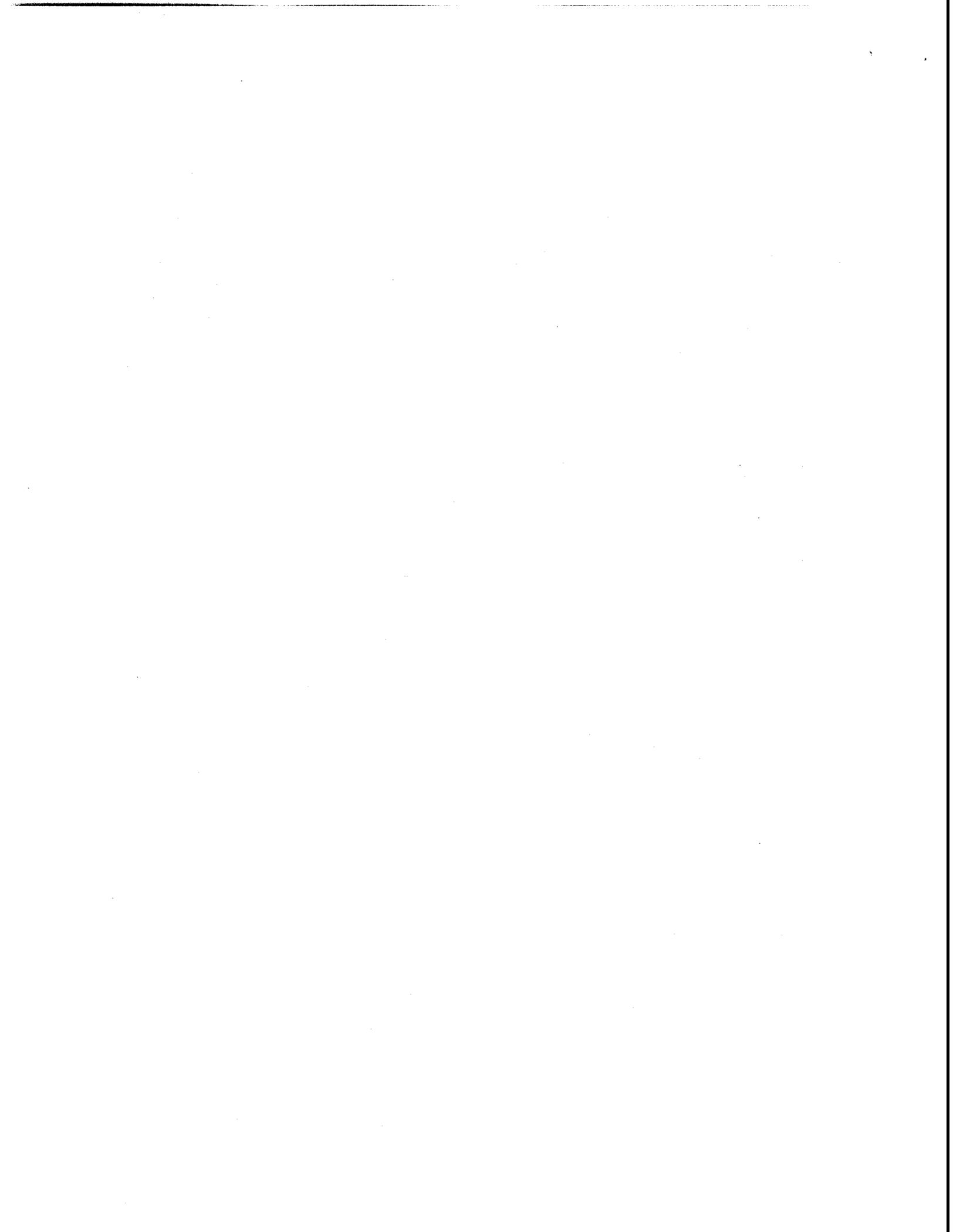
Section 212(e) of the Act states in pertinent part that:

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 and/or child would experience exceptional hardship if they resided in [REDACTED] for two years with the applicant. In a declaration, the applicant's spouse contends that she would suffer emotional, financial and academic hardship were she to relocate to Syria to reside with the applicant for a two-year period. She notes the poor environmental conditions, including pollution and lack of clean water, substandard medical care, high unemployment, low wages for physicians, and instability in the country due to terrorist activity and anti-American sentiment. She further asserts that were she to relocate abroad, she would not be able to continue her education as the credits earned in the United States would not transfer and education in Syria is far behind American standards. *Letter from Noor Tarabishy*, dated October 12, 2009.

Documentation has been provided by counsel to support the applicant's spouse's assertions regarding the problematic country conditions in [REDACTED], including pollution, substandard medical care, high unemployment, low wages for physicians, instability due to terrorist activity and anti-American sentiment. In addition, evidence of the applicant's spouse's college enrollment and extensive financial obligations has been provided. Finally, the AAO notes the following from the U.S. Department of State, in pertinent part:

A porous border with Iraq and long-standing border issues with [REDACTED] and Israel, have created a complex security environment in Syria, with Syria's hosting of terrorist organizations also making it a potential target for reprisal.

While most Syrians appear genuinely friendly towards foreigners, underlying tensions can lead to a quick escalation in the potential for violence. In a few recent examples: an American reported being verbally harassed and told "you Americans are not welcome here" after he avoided stepping on an Israeli flag that had been placed on the ground in a shopping area. In another incident, an American riding in a taxi, sensing anti-American sentiment from the driver, said they were from another country. Upon hearing this, the driver told them "Good, because if you were American I would kill you." On another occasion, an American reported that a Syrian military vehicle pulled up next to him and mimicked actions of running him off the road.

On September 12, 2006, the U.S. Embassy in Damascus was attacked by assailants using improvised explosives, gunfire, and two vehicles laden



with explosives. On February 4, 2006, mobs protesting caricatures of the [REDACTED] destroyed the Norwegian and Chilean embassies and severely damaged the Danish and Swedish diplomatic missions. On April 27, 2004, there was a violent clash in which three people died in an area of Damascus where many foreign citizens reside. It has never been clear whether the shootout with Syrian security forces involved common criminals or terrorists.

In 1998 and 2000, mobs attacked the U.S. Ambassador's residence and the U.S. Embassy, respectively. In 1997, twenty-two people were killed when a public bus was bombed in downtown Damascus.

All of these attacks serve as reminders that Syria is not immune from political or purely criminal violence. Americans traveling through the area should remain aware that U.S. interests and citizens might be targeted.

Basic medical care and medicines are available in Syria's principal cities, but not necessarily in outlying areas. Serious illnesses and emergencies may require evacuation to a Western medical facility.

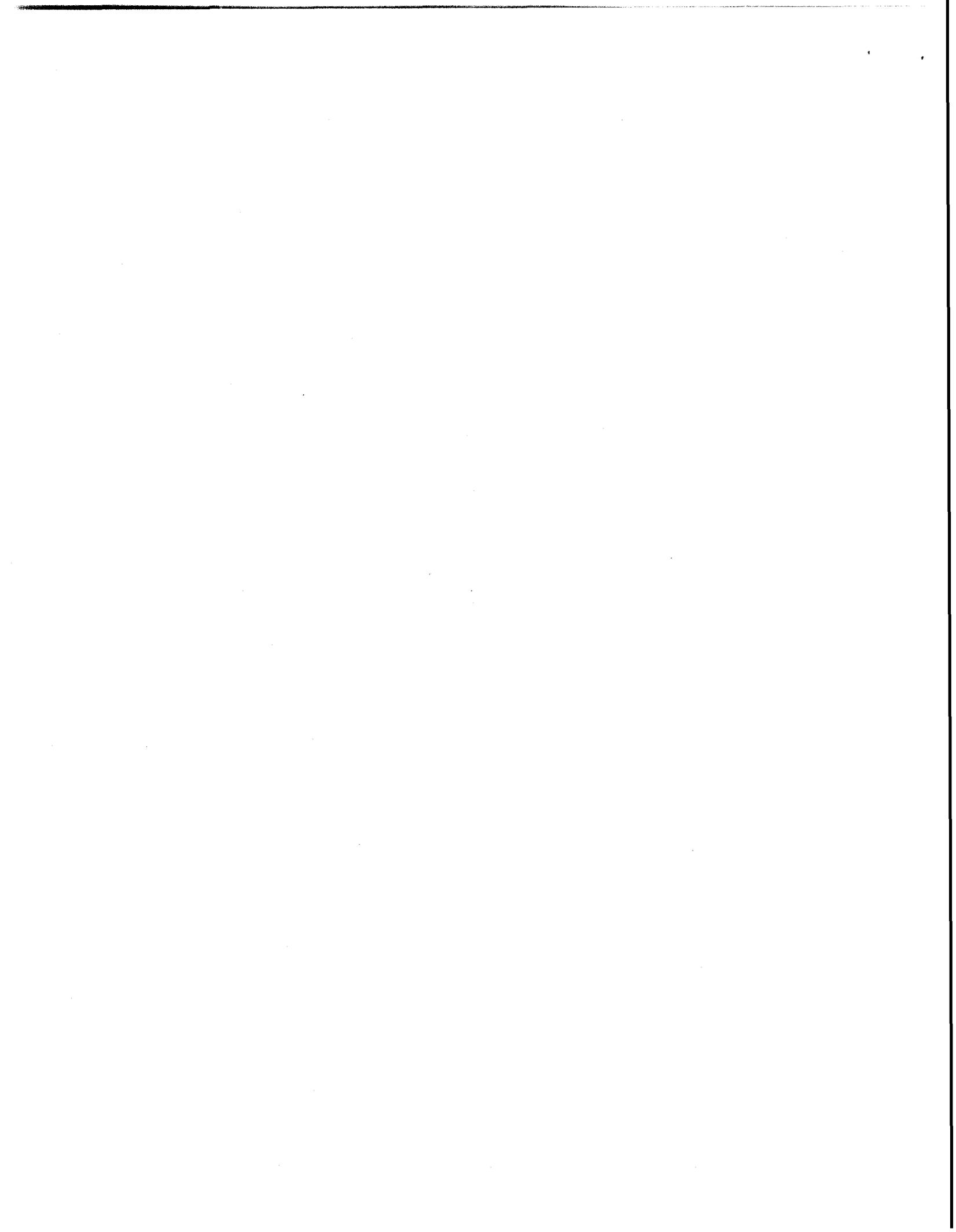
Country Specific Information-Syria, U.S. Department of State, dated February 18, 2010.

In addition, with respect to the financial situation in Syria, as noted by the U.S. Department of State, in pertinent part:

According to Syrian Government statistics, the unemployment rate in 2009 was 12.6%; however, more accurate independent sources place it closer to 20%. Government and public sector employees constitute about 30% of the total labor force and are paid very low salaries and wages. Government officials acknowledge that the economy is not growing at a pace sufficient to create enough new jobs annually to match population growth. The UN Development Program announced in 2005 that 30% of the Syrian population lives in poverty and 11.4% live below the subsistence level.

Background Note-Syria, U.S. Department of State, dated February 17, 2010.

Based on the applicant's spouse's academic program, the problematic country conditions, including substandard economy and medical care, high poverty and unemployment and low wages, terrorist activity and anti-American sentiment, the AAO concludes that the applicant's U.S. citizen spouse and child would experience exceptional hardship were they 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 U.S. citizen spouse and/or child would suffer exceptional hardship if they remained in the United States during the period the applicant resides in Syria. With respect to this criteria, the applicant's spouse first notes that she and her child would suffer emotional hardship due to long-term separation from the applicant. She evidences the cost-prohibitive nature of traveling to Syria regularly to visit the applicant. In addition, she contends that her spouse is the sole breadwinner for the family while she pursues her college degree and cares for their young child, but were he to relocate abroad, she would have to assume the role of primary caregiver and breadwinner as her spouse would not be able to make enough money in Syria to support his family in the United States and such an arrangement would cause her hardship. Finally, she notes that were her spouse to relocate abroad, she would not have the financial and emotional resources to complete her coursework, thereby causing her significant academic disruption. *Supra* at 1-2, 4.

In support, a letter has been provided establishing the applicant's gainful employment in the United States, earning over \$46,000. *Letter from [REDACTED] Surgery, University of Minnesota*, dated May 8, 2009. In addition, evidence of the medical insurance provided by the applicant's employer has been submitted. Moreover, evidence establishing the applicant's spouse's college enrollment has been provided. *Concise Student Schedule, University of Michigan-Dearborn*, dated October 5, 2009. Furthermore, evidence of the low wages paid to physicians in Syria and the financial obligations the applicant and his spouse are responsible for, including a car loan and hospital bills pertaining to their child's birth, has been submitted. Finally, counsel has provided documentation establishing the negative ramifications of separating a young child from a parent.

Based on the record, the AAO has determined that the applicant's U.S. citizen spouse would experience exceptional hardship if she remained in the United States while the applicant relocated to Syria to comply with his foreign residency requirement. The applicant's spouse would be required to assume the role of primary caregiver and breadwinner to a young child. Moreover, the record indicates that the applicant's spouse is integrated into the U.S. lifestyle and educational system; she is currently pursuing her bachelor's degree while relying on the applicant's financial and emotional support. 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 due to financial hardship and the need to care for her child as a single parent, 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 would experience exceptional hardship were she to relocate to Syria and in the alternative, were she to remain in the United States without the applicant, for the requisite two-year term. The evidence in the record establishes the hardship the applicant's spouse would suffer if the applicant temporarily



departed the U.S. would go significantly beyond that normally suffered upon the temporary separation of families.¹

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.

¹ As the AAO has determined that exceptional hardship exists with respect to the applicant's U.S. citizen spouse were the applicant to relocate to Syria for a two-year period, it is not necessary to evaluate whether the applicant's U.S. citizen child would experience exceptional hardship were the applicant to relocate abroad for a two-year period.

