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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

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[REDACTED]

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAR 09 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:

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.

Perry Rhew  
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, a native and citizen of Algeria, obtained J-1 nonimmigrant exchange status in January 2008. She is 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) based on U.S. government financing. 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 Algeria temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled the two-year foreign residence requirement in Algeria.

The director determined that the applicant failed to establish that the applicant's U.S. citizen spouse would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Algeria. *Director's Decision*, dated August 27, 2009. The application was denied accordingly.

In support of the appeal, the applicant submits the following: the Form I-290B, Notice of Appeal, dated September 22, 2009; a letter from the applicant's spouse; and a letter from the applicant with supporting medical documentation pertaining to her spouse. 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 were he to relocate to Algeria to reside with the applicant due to her foreign residence requirement. To begin, the applicant's spouse asserts that he would suffer emotional hardship, as he does not speak the language and is not familiar with the country. He also notes that he would suffer as he would not be able to receive adequate treatment for his medical/mental health conditions by physicians familiar with his situation. Finally, he references the fact that Algeria is not a developed country. *Letter from* [REDACTED] dated May 28, 2009.

The applicant further elaborates on the hardships her U.S. citizen spouse would encounter in Algeria. She references the substandard economy in Algeria, where the unemployment rate is as high as 15%, thereby causing financial hardship to her spouse. Moreover, she notes that the official language in Algeria is Arabic and the only other language is French, neither language which the applicant's spouse speaks, thereby creating difficulty communicating and obtaining gainful employment. Finally, she notes that rent is about 50% of an average salary in Algeria, and thus, they will have no savings to cover the medical expenses her spouse will have to endure while in Algeria. The applicant notes that such a financial predicament will be detrimental to the applicant's spouse's medical and mental health. *Letter from* [REDACTED] dated May 28, 2009.

Documentation establishing the applicant's spouse's mental health situation has been provided. Such evidence includes a letter confirming that the applicant's spouse is currently under a doctor's care, being treated for Anxiety and Depression. *Letter from* [REDACTED] dated June 4, 2009. In addition, medical evidence establishing the applicant's spouse's past medical treatment for anxiety and depression and the corresponding medications prescribed to the applicant's spouse for his conditions, including Alprazolam and Lexapro, have been provided. In addition, the AAO notes that the U.S. Department of State has issued a travel warning for U.S. citizens considering travel to Algeria. As stated:

The State Department warns U.S. citizens of the risks of travel to Algeria. This Travel Warning updates information on the current security situation in Algeria and the continuing threat posed by terrorism. This replaces the Travel Warning dated March 3, 2009.

The Department of State urges U.S. citizens who travel to Algeria to evaluate carefully the risks posed to their personal safety. Terrorist attacks, including bombings, false roadblocks, kidnappings, ambushes, and assassinations occur regularly, particularly in the Kabylie region of the country. Since early 2007, the use of suicide bomb attacks, particularly vehicle-borne attacks, has emerged as a terrorist tactic in

Algeria, including in the capital. The group that claimed credit for the December 11, 2007, suicide car-bomb attacks in Algiers has pledged more attacks against foreign targets, and specifically against American targets.

The Department of State recommends that U.S. citizens avoid overland travel in Algeria. Americans who reside or travel in Algeria should take prudent security measures while in the country, including making provisions for reliable and experienced logistical support. Visitors to Algeria are advised to stay only in hotels where adequate security is provided. All visitors to Algeria should remain alert and adhere to prudent security practices such as avoiding predictable travel patterns and maintaining a low profile.

*Travel Warning, U.S. Department of State, dated November 16, 2009.*

Finally, the U.S. Department of State notes that medical care is not up to Western standards, most medical practitioners do not speak English and prescription medicines are not readily available. *Country Specific Information-Algeria, U.S. Department of State, dated October 30, 2009.*

Based on a totality of the circumstances, the AAO concurs with the director that the applicant's U.S. citizen spouse would suffer exceptional hardship were he to relocate to Algeria. A relocation abroad would cause the applicant's spouse hardship that would be significantly beyond that normally suffered upon the temporary relocation of families due to a foreign residency requirement.

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 period that the applicant resides in Algeria. As noted above, the applicant has documented that her spouse has been diagnosed, and is currently being treated, for anxiety and depression. Evidence of medications prescribed to the applicant's spouse to treat the above-referenced conditions has been provided.

As the applicant's spouse further elaborates,

All I can say is that since I met my wife [the applicant], the quality of my life greatly improved as I'm happier and I have more strength to face life. My condition is an every day challenge, and it is her support, love, understanding and encouragement that is keeping me going. I just cannot imagine her leaving me for two years, and I don't know if I will make it. I need her beside me as I go through stressful and painful moment everyday. She's the one assuring and comforting me.... I need her, and...this separation would impose exceptional hardship on me by inflicting a traumatic event upon me and thus, causing the worsening of my condition....

Letter from [REDACTED]

Moreover, the applicant notes that she has been offered gainful employment in the United States, thereby providing her the opportunity to assist her spouse with respect to his debt, including \$16,000 in student loans and \$6,000 for his car, but were she to relocate abroad, her spouse would encounter financial hardship. *Letter from [REDACTED] dated November 26, 2008.* A letter confirming the applicant's prospective employment opportunities in the United States has been provided. *See Letter from [REDACTED] of IC CAE Program, The University of Texas-Pan American, dated December 1, 2008.*

Based on a totality of the circumstances, the AAO has determined that the applicant's U.S. citizen spouse would experience exceptional hardship if he remained in the United States while the applicant relocated to Algeria to comply with her two-year foreign residency requirement. The applicant's spouse needs the applicant's support on a day to day basis, for emotional stability and to ensure the continued financial viability of the household.

The AAO thus concludes that the applicant has established that her U.S. citizen spouse would experience exceptional hardship were he to relocate to Algeria and in the alternative, were he to remain in the United States without the applicant, for the requisite 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.

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 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 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.