



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

MAY 19 2010

IN RE: Applicant: [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).

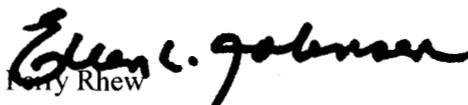
ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Emily 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 applicant, a native and citizen of Egypt, obtained J-1 nonimmigrant exchange status in July 1994 to participate in graduate medical training. 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 lawful permanent resident spouse and U.S. citizen child, born in 1991, would suffer exceptional hardship if they moved to Egypt 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 Egypt.

The director determined that the applicant had failed to establish that a qualifying relative would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Egypt. *Director's Decision*, dated January 19, 2010. The application was denied accordingly.

In support of the appeal, counsel for the applicant submits a brief, dated March 12, 2010, and referenced exhibits. 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 lawful permanent resident spouse and/or U.S. citizen child would experience exceptional hardship if they resided in Egypt for two years with the applicant. In a declaration, the applicant contends that her U.S. citizen child would suffer emotional, physical, financial and academic hardship were she to relocate to Egypt to reside with the applicant for a two-year period. To begin, the applicant documents that her child is being treated for numerous medical and mental health ailments, including depression, chronic pelvic pain and asthma. Were she to relocate to Egypt to reside with her mother, the applicant asserts that her child would not be able to receive proper medical and mental health treatment due to Egypt's substandard medical care, the cost-prohibitive nature of treatment and medications, and the poor environmental conditions which could worsen her child's asthma. The applicant further notes the cultural and language barriers, discrimination against women and religious minorities, including Christians such as her daughter, anti-American sentiment, and the lack of gainful employment for physicians. Finally, the applicant references that her child is attending the University of Michigan and a relocation to Egypt would be disruptive to her education. *Affidavit of* [REDACTED] dated March 9, 2010.

In support, counsel has submitted extensive medical and mental health documentation pertaining to the applicant's child. As noted by [REDACTED], the applicant's child's treating physician, the applicant's child has been diagnosed with depression and anxiety and is taking anti-depressants. [REDACTED] further notes that the child has threatened to commit suicide in the past. *Letter from* [REDACTED]. In addition, documentation regarding human rights abuses in Egypt, including discrimination against Christians and unfair practices towards women, has been provided. *2009 Human Rights Report-Egypt, U.S. Department of State*, dated March 11, 2010. Moreover, evidence has been submitted establishing the difficulties the applicant would face in obtaining gainful employment in Egypt to maintain her child's quality of living due to low wages for physicians. Furthermore, the U.S. Department of State confirms that medical care falls short of U.S. standards in Egypt. *Country Specific Information-Egypt, U.S. Department of State*, dated March 9, 2010. Finally, evidence has been provided to confirm the applicant's child's enrollment at the University of Michigan.

The record establishes that the applicant's child, a native and citizen of the United States, currently 19 years old, is integrated into the U.S lifestyle and educational system. The Board of Immigration

Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's child at this stage of her education and relocate her to Egypt, in light of her documented medical and mental health issues, her inability to speak the language, unfamiliarity with the country, culture and customs, the religious and gender discrimination in Egypt and the substandard economy and medical care, would constitute exceptional hardship. As such, based on a totality of the circumstances, the AAO concurs with the director that the applicant's U.S. citizen child would encounter exceptional hardship were she to relocate to Egypt for a two-year period to reside with the applicant.

The second step required to obtain a waiver is to establish that the applicant's 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 Egypt. The applicant asserts that were she to relocate abroad, her U.S. citizen child would suffer exceptional emotional, medical, academic and financial hardship. To begin, the applicant explains and documents that her child suffered parental alienation syndrome due to the lengthy divorce battle between the applicant and her ex-husband and her ex-husband's actions to separate their child from her mother. Due to the acrimonious divorce and the problems she has faced with her biological father, the applicant notes that her child is very dependent on her emotionally and psychologically. As the applicant asserts:

I speak to her [the applicant's child] 4 times a day, and visit her every other weekend. I console her over the phone when her depression gets bad or when she experiences a panic attack or falls ill. If I return to Egypt, I would not be able to talk to [redacted] [the applicant's child] as often as I do now because of the cost of international phone calls and because of the time difference. Furthermore, I will be unable to visit [redacted] from Egypt. I will have to take a job as a doctor in Egypt to support myself, most likely in a public hospital. Public employees in Egypt must obtain permission from the government to leave the country, and often are not given this permission. This happened to me before when I was first trying to come to the U.S. twenty years ago.... I am afraid that this will occur again and I will not be able to visit [redacted] for 2 whole years, or else risk losing my job and source of support. I am afraid that my separation from [redacted] depression will spiral out of control as she has no one else who provides the emotional support that I do for her.

Moreover, if I leave the U.S., [redacted] will be deprived of the psychological treatment that she needs because she will not have any health insurance. [redacted] is dependent on my health insurance until she turns 25, but this insurance will only continue so long as I remain employed with my current employer in the U.S. If I return to Egypt, [redacted] will be left alone

with no healthcare coverage and no mother to help her deal with her serious psychological problems.

██████████ will also suffer...because she will be deprived of her college education.... This past year, I paid \$31,000 for her education alone (i.e. not counting living expenses) for ██████████. As the average monthly income of doctors in Egypt is \$60-\$70, it will be impossible for me to continue paying for ██████████ education. Since ██████████ father does not support her financially, or in any other way, ██████████ would be forced to abandon her dream of earning a degree from the University of Michigan....

Supra at 1-3.

The applicant's child confirms that her mother plays a critical role in her well-being, as she no longer speaks with or receives any emotional or psychological support from her biological father. The applicant's child further corroborates her mother's statements with respect to her continuous telephonic communications, four times a day, and her visits every two weeks, with her mother. *Affidavit of* ██████████ dated March 5, 2010.

In addition, ██████████ references the strong relationship the applicant's child has with her mother, and the severe blow to her emotional and psychological state were her mother unable to reside in the United States. As ██████████ asserts,

██████████ [the applicant's child] is a young adult with depression, a fragile sense of self-confidence, marginal coping skills in the personal arena, and excessive dependence on her mother [the applicant]. Her past family troubles have undoubtedly contributed to, if not caused, her current state of being....

[I]f ██████████ remains in the U.S., I feel very strongly that her mother leaving the country for two years would be a severe blow to her emotional and psychological state. ██████████ remains emotionally labile and dependent on her mother without whom she would undoubtedly be unable to cope. The absence of ██████████ mother will likely cause a significant downward spiral of depression. Because of ██████████ depression and potential for recurrence of suicidal tendencies, I would greatly advise against her mother leaving the country for extended periods of time....

Supra at 1-2.

Documentation pertaining to the applicant's and her ex-husband's acrimonious divorce and custody plan have been provided, to corroborate ██████████ assertions with respect to the child's past family troubles and their role in her mental health. In addition, a letter has been provided confirming the applicant's child's health care coverage through the applicant's U.S. employment. *Letter from*

[REDACTED] dated June 15, 2009. In addition, documentation has been provided establishing the applicant's financial contributions to her child's college tuition and the inability to obtain employment in Egypt that would permit her to continue her financial contributions to her child's academics. Finally, evidence, in the form of credit card statements establishing the applicant's regular visits to see her child, and email correspondence establishing the applicant's request to a physician recruiter, pursuant to her child's wishes, that a job be found for her in Michigan so that she may reside closer to her child, have been provided by counsel. *Email Correspondence between [REDACTED]* [REDACTED] dated March 2010.

Based on a totality of the circumstances, the AAO finds that the applicant has established that her U.S. citizen child would suffer emotional, medical, academic and financial hardship were she to remain in the United States while the applicant relocated abroad to fulfill her two-year foreign residency requirement. The applicant's child would have to be separated from her mother on a long-term basis, without her mother's emotional support, health care coverage to ensure continued medical and mental health treatment and medications, and financial contributions for college and living expenses. Due to the high costs of travel to Egypt and her academic program, the applicant's child would not be able to visit her mother regularly. The AAO finds that the applicant's departure for a two-year period would cause the applicant's child hardship that would be 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 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.

[REDACTED]

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