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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]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 14 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:

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,

Perry Rhew  
Chief, Administrative Appeals Office

ACTION REQUIRED  
APPROPRIATE HANDLING  
Initials: JT Date: 10/22/10  
FCO/Unit COW

**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 of Pakistan, obtained J-1 nonimmigrant exchange status in January 1992. The applicant 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 government financing. *IAP-66 Request Form to Begin a New Program-International Admissions*, dated January 15, 1992. 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 November 1999, would suffer exceptional hardship if he moved to Pakistan<sup>1</sup> 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 Pakistan.

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. *Director's Decision*, dated August 29, 2009. The application was denied accordingly.

In support of the appeal, counsel for the applicant submits a brief 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:

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<sup>1</sup> As noted by the U.S. Department of State,

Question Concerning Exchange Visitors who do not return home but move to another country, i.e. Canada.

Q. For example, if the EV from country X completes the J program in the US, but instead of returning home to country X, moves to another country Y, i.e. Canada, and acquires landed immigrant status there, can the EV fulfill the two-year foreign residence requirement in Canada?

A. No. The country which was your country of legal permanent residence at the time you received your J-1 status is the country to which you must return to fulfill the two-year foreign residence requirement.

*Waivers of INA 212(e)-Frequently Asked Questions, [http://travel.state.gov/pdf/J\\_WaiverFAQ21-DEC-06.pdf](http://travel.state.gov/pdf/J_WaiverFAQ21-DEC-06.pdf)*

The AAO concurs with counsel that the applicant must comply with his two-year foreign residence requirement by returning to Pakistan, the county which was the applicant's legal permanent residence at the time he received his J-1 visa and status.

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 child would experience exceptional hardship if he resided in Pakistan for two years with the applicant. In a declaration, the applicant contends that his U.S. citizen child would suffer emotional, physical and financial hardship were he to relocate to Pakistan to reside with the applicant for a two-year period. He notes the poor environmental conditions and exposure to diseases and pollutions, violence, including armed robbery, random shootings, tribal fighting and kidnappings for ransom, terrorist activity and anti-American sentiment, lack of gainful employment opportunities, human rights violations and the general instability of the country. *Declaration of* [REDACTED] dated December 15, 2005.

Extensive documentation has been provided by counsel to support the applicant's assertions regarding the problematic country conditions in Pakistan. In addition, documentation has been provided establishing the applicant's child's numerous health problems while in Pakistan, including diarrhea, vomiting, constipation, high grade fever, ear infections, respiratory problems, loss of weight and gastroenteritis, due to the problematic environmental conditions in Pakistan. Finally, the

AAO notes that the U.S. Department of State has issued a Travel Warning for U.S. citizens intending to travel to Pakistan. As the U.S. Department of State notes, in pertinent part:

The State Department warns U.S. citizens of the risks of travel to Pakistan. This Travel Warning replaces the Travel Warning dated January 7, 2010, updates information on security incidents and reminds U.S. citizens of ongoing security concerns in Pakistan.

Pakistani military forces have engaged in a campaign against violent extremist elements across many areas of the Federally Administered Tribal Areas (FATA) and parts of the Khyber Pakhtunkhwa (KPk) province. Terrorists blame the Pakistani and the U.S. governments for the military pressure on their traditional havens and the death of Tehrik-e-Taliban Pakistan (TTP) leader- Baitullah Mehsud- in NWFP in August 2009. In response, militants are seeking to increase their attacks on civilian, government, and foreign targets in Pakistan's cities.

The presence of Al-Qaida, Taliban elements, and indigenous militant sectarian groups poses a potential danger to U.S. citizens throughout Pakistan, especially in the western border regions of the country. Flare-ups of tensions and violence in the many areas of the world also increase the possibility of violence against Westerners. Terrorists and their sympathizers regularly attack civilian, government, and foreign targets, particularly in the Khyber Pakhtunkhwa (KPk) province. The Government of Pakistan has heightened security measures, particularly in the major cities. Threat reporting indicates terrorist groups continue to seek opportunities to attack locations where U.S. citizens and Westerners are known to congregate or visit, such as shopping areas, hotels, clubs and restaurants, places of worship, schools, or outdoor recreation events. In recent incidents, terrorists have disguised themselves as Pakistani security forces personnel to gain access to targeted areas. Some media reports have recently falsely identified U.S. diplomats – and to a lesser extent U.S. journalists and NGO workers – as being intelligence operatives or private security personnel.

Visits by U.S. government personnel to Peshawar and Karachi are limited, and movements by U.S. government personnel assigned to the Consulates General in those cities are severely restricted. U.S. officials in Lahore and Islamabad are instructed to restrict the frequency and to minimize the duration of trips to public markets, restaurants, and other locations. Only a limited number of official visitors are placed in hotels, and for limited stays. Depending on ongoing security assessments, the U.S. Embassy places areas such as hotels, markets, and/or restaurants off limits to official personnel. U.S. citizens in Pakistan are strongly urged to avoid

hotels that do not apply stringent security measures and to maintain good situational awareness, particularly when visiting locations frequented by Westerners.

Since October 2009, terrorists have executed coordinated attacks with multiple operatives using portable weaponry such as guns, grenades, RPGs, and suicide vests or car bombs in Peshawar, Lahore and Rawalpindi. Recent attacks included armed assaults on heavily guarded sites such as the U.S. Consulate in Peshawar, the Pakistani Army headquarters in Rawalpindi, the United Nations World Food Program's office in Islamabad, police training complexes in Lahore; targeted assassinations, including attacks on Pakistani military officers and politicians in Islamabad, as well as an Iranian diplomat in Peshawar; and suicide bomb attacks in public areas, such as an Islamabad university, a Rawalpindi mosque, and major marketplaces in Lahore and Peshawar.

U.S. citizens have been victims in such attacks. On April 5, 2010, a complex attack on the U.S. Consulate in Peshawar was carried out, with several Pakistani security and military personnel killed or wounded. The October 2009 attack on the World Food Program headquarters resulted in the serious injury of a U.S. citizen. On November 12, 2008, a U.S. citizen contractor and his driver in Peshawar were shot and killed in their car. In September 2008, over 50 people, including three U.S. citizens, were killed and hundreds were injured when a suicide bomber set off a truck filled with explosives outside a major international hotel in Islamabad. In August 2008, gunmen stopped and shot at the vehicle of a U.S. diplomat in Peshawar. In March 2008, a restaurant frequented by Westerners in Islamabad was bombed, killing one patron and seriously injuring several others, including four U.S. diplomats. On March 2, 2006, an U.S. diplomat, a Consulate employee, and three others were killed when a suicide bomber detonated a car packed with explosives alongside the U.S. Consulate General in Karachi. Fifty-two others were wounded.

Since 2007, several U.S. citizens throughout Pakistan have been kidnapped for ransom or for personal reasons. Kidnappings of foreigners are particularly common in the NWFP and Balochistan. In 2008, one Iranian and two Afghan diplomats, two Chinese engineers, and a Polish engineer were kidnapped in the Khyber Pakhtunkhwa (KPk) province. In February 2009, a U.S. UNHCR official was kidnapped in Balochistan. Kidnappings of Pakistanis also increased dramatically across the country, usually for ransom.

According to the Department of State's 2009 Human Rights Report for Pakistan, there were over 200 terrorist attacks, including more than 65

suicide bombings, which killed an estimated 970 civilians and security personnel. Some of the attacks have occurred outside major hotels, in market areas, and other locations frequented by U.S. citizens. Other targets have included restaurants, Pakistani government officials and buildings, police and security forces, mosques, diplomatic missions, and international NGOs. Since late 2007, occasional rockets have targeted areas in and around Peshawar.

Access to many areas of Pakistan, including the FATA along the Afghan border, and the area adjacent to the Line of Control (LOC) in the disputed territory of Kashmir, is restricted by local government authorities for non-Pakistanis. Travel to any restricted region requires official permission by the Government of Pakistan. Failure to obtain such permission in advance can result in arrest and detention by Pakistani authorities. Due to security concerns the U.S. Government currently allows only essential travel within the FATA by U.S. officials. Travel to much of Khyber-Pakhtunkhwa (KPk) province and Balochistan is also restricted.

Rallies, demonstrations, and processions occur regularly throughout Pakistan on very short notice. The December 2007 death of [REDACTED] a clash between two groups of lawyers in April 2008, ethnic clashes in December 2008, and the bombing of a religious procession in December 2009 each triggered widespread rioting in Karachi. Multiple deaths and injuries as well as widespread property damage occurred on each occasion. Demonstrations have often taken on an anti-American or anti-Western character, and U.S. citizens are urged to avoid large gatherings.

*Travel Warning, U.S. Department of State, dated July 22, 2010.*

Based on the political and social turmoil in Pakistan, financial hardship due to low wages, environmental concerns, the applicant's child's past medical problems when visiting Pakistan, anti-American sentiment, terrorist activity, high crime 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 child would experience exceptional hardship were he to accompany the applicant to Pakistan for a two-year term. The hardship the applicant's U.S. citizen child would encounter were he to relocate to Pakistan for a two-year period goes significantly beyond that normally suffered upon the temporary relocation of families based on a two-year foreign residency requirement

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen child would suffer exceptional hardship if he remained in the United States during the period the applicant resides in Pakistan. As noted and documented by counsel, the applicant's spouse's first entry into the United States was in J-2 status, when she was still a citizen of only Pakistan, with Pakistan being her last place of residence. Therefore, the applicant's spouse is subject to Pakistan to serve her two-year

foreign residency requirement. Counsel further asserts that were the applicant and his spouse to return to Pakistan to comply with the foreign residency requirement, their child would be left alone, as the applicant and his spouse have no family in the United States that would be able to care for their child for a two-year period. *Brief in Support of Appeal*, dated September 29, 2009.

The record indicates that both the applicant and his wife are previous J visa holders subject to the two-year foreign residency requirement. Such a requirement would leave their young child in the United States without his mother and father. This situation would constitute exceptional hardship to the applicant's U.S. citizen child if he remained in the United States.

The AAO thus concludes that the applicant has established that his U.S. citizen child would experience exceptional hardship were he to relocate to Pakistan and in the alternative, were he 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.