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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



#3

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

FEB 22 2011

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:

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,

Maria Yeh
for
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 Egypt, most recently obtained J-1 nonimmigrant exchange status in September 2010. 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. The applicant presently seeks a waiver of her two-year foreign residence requirement, based on the claim that her U.S. citizen child, born in September 1999, would suffer exceptional hardship if he moved to Egypt 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 Egypt.

The director determined that the applicant failed to establish that a qualifying relative would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement. *Director's Decision*, dated September 29, 2010. The application was denied accordingly.

In support of the appeal, the applicant submits a letter, dated October 27, 2010. The entire record was reviewed and considered in rendering this decision.

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

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 Egypt for two years with the applicant. In a declaration, the applicant contends that her U.S. citizen child would suffer emotional and academic hardship were he to relocate to Egypt to reside with the applicant for a two-year period. She explains that when her U.S. citizen child resided in Egypt after the completion of her first J-1 program, he suffered academic hardship due to the difficulties with respect to the Arabic language and cultural adjustment programs. As corroborated by [REDACTED] School [REDACTED] American Language Schools, "When he [the applicant's child] started school, Ahmed [the applicant's child] had very limited, if any, knowledge of Arabic. The school teachers and counselors worked hard with [REDACTED] and his parents to develop his knowledge of Arabic and to help him adjust to the school context. Ahmed was able to make progress, yet his scores in Arabic and other subjects taught in Arabic continued to be lower than the average scores of students in his age. It also constituted an obstacle to his learning development that required special attention...." *Letter from* [REDACTED] [REDACTED], dated August 5, 2010. Based on the academic hardship her child experienced in Egypt in the past, the applicant asserts that were they to relocate to Egypt again in order for the applicant to comply with the two-year foreign residence requirement, her son will again experience academic deterioration and will likely suffer academic hardship upon his return to the United States after the two-year period has been completed.

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

This replaces the Travel Warning for Egypt dated February 1, 2011. The U.S. Department of State continues to recommend that U.S. citizens avoid travel to Egypt at this time. On February 1, the Department of State ordered the departure of all non-emergency U.S. government personnel and family members from Egypt. U.S. citizens should consider leaving Egypt as soon as they can safely do so, due to ongoing political and social unrest. Large-scale demonstrations with the potential for violence continue in several areas of the country, and there are periodic overland travel disruptions. The Government of Egypt has modified the curfew several times; hours are now 7:00 p.m. to 6:00 a.m. throughout Egypt until further notice. U.S. citizens should obey curfew orders and remain indoors during curfew hours.

U.S. citizens who wish to depart Egypt should proceed to the airport and secure commercial passage out of the country. Cairo airport is open and operating, and commercial airlines are reporting flight availability from Cairo. Commercial flights are also operating from ~~Dakar, Alexandria, and~~ ~~_____~~. Given the current availability of commercial flights, no additional U.S. government-chartered flights are planned. Travelers with the means to do so should make every effort to utilize commercial flights. Some commercial airlines also offer pet transport. Travelers should remain in contact with their airlines or tour operators concerning flight schedules, and arrange to arrive at the airport well before curfew hours. Do not wait for a reply from the embassy or the Department of State before traveling to the nearest airport; further delay is not advised.

The U.S. Department of State strongly urges U.S. citizens to avoid all demonstrations in Egypt, as even peaceful ones can quickly become violent and a foreigner could become a target of harassment or worse. U.S. citizens who are near demonstrations should remain in their residences or hotels until the demonstrations subside. Security forces may block off the area around the U.S. Embassy during demonstrations, and U.S. citizens should not attempt to come to the U.S. Embassy or the Tahrir Square area during that time. U.S. citizens are urged to remain alert to local security developments and to be vigilant regarding their personal security. U.S. citizens should carry identification and a cell phone that works in Egypt.

Travel Warning, U.S. Department of State, dated February 6, 2011.

Based on the applicant's U.S. citizen child's previous academic and social hardship while in Egypt, and in light of the U.S. Department of State's position on travel to Egypt 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 Egypt for a two-year term. The hardship the applicant's U.S. citizen child would encounter were he to relocate to Egypt 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 Egypt. The record establishes that the applicant, her husband and her elder child are all Egyptian citizens who entered the United States in J-1 or J-2 status. The applicant asserts that were she, her husband and her elder son to return to Egypt to comply with the two-year foreign residency requirement, her younger child would be left alone, as the applicant and her spouse have no family or friends in the United States that would be able to care for their child for a two-year period. *Letter from* ~~_____~~

The record indicates that the applicant, her husband and their elder child are J visa holders subject to the two-year foreign residency requirement. Such a requirement would leave the applicant's young child in the United States without his mother, father or sibling. The AAO concurs with the director that 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 her U.S. citizen child would experience exceptional hardship were he to relocate to Egypt 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 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 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.