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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**



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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JAN 28 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:  
[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

**DISCUSSION:** The waiver application was denied by the Acting 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 Jordan, obtained J-1 nonimmigrant exchange status in September 2004. He 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 his two-year foreign residence requirement, based on the claim that his U.S. citizen spouse, step-child, born in 2007, and biological child, born in 2009, would suffer exceptional hardship if they moved to Jordan 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 Jordan.

The acting 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 Jordan. *Acting Director's Decision*, dated July 21, 2010. The application was denied accordingly.

In support of the appeal, counsel for the applicant submits the following: a brief; a psychological assessment and recommendations, dated August 17, 2010; an employment confirmation letter for the applicant; and evidence of the applicant's spouse's academic enrollment. 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 children would experience exceptional hardship if they resided in Jordan for two years with the applicant. In a declaration, the applicant's spouse explains that she has primary custody of her son from a previous marriage, born in June 2007, and the residence of the child, as determined by the Superior Court of California, County of Los Angeles, is California. Were she to relocate abroad, the applicant's spouse asserts that she would not be able to continue in her role as primary caregiver to her son, and she would not be able to see her son regularly. The applicant's spouse further explains that she is still going to school and were she to relocate abroad, she would suffer academic hardship as she would have to cease her studies. *Declaration of* [REDACTED] dated May 12, 2010. Finally, the AAO notes that the applicant's spouse was born in the United States. She has an extensive network of family, including her mother, father, brother, sister, aunt, uncle and three cousins. *See Psychological Assessment and Recommendations from* [REDACTED] dated August 17, 2010.

Evidence of the applicant's spouse's primary custody of her child from a previous marriage and her academic enrollment has been provided by counsel. In addition, the AAO notes that the U.S. Department of State has confirmed that the threat of terrorism in Jordan remains high, as does anti-American sentiment. *Country Specific Information-Jordan, U.S. Department of State*, dated December 20, 2010. Based on a totality of the circumstances, the AAO concurs with the acting director that the applicant's U.S. citizen spouse would experience exceptional hardship were she to accompany the applicant to Jordan 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 children would suffer exceptional hardship if they remained in the United States during the period the applicant resides in Jordan. The applicant's spouse declares that were her husband to relocate abroad, she would be forced to become primary caregiver to two young children<sup>1</sup> without the financial and emotional support of her spouse. In addition, the applicant's spouse explains that she relies on her spouse for complete financial support, as he is the sole breadwinner of the family. She notes that she is unable to obtain gainful employment as she is caring for two young children, and is pregnant. Finally, the applicant's spouse contends that she is in the process of completing her credentialing requirements for her B.A. in Education, but were her spouse to relocate abroad, she

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<sup>1</sup> The record establishes that the applicant's spouse is pregnant with a third child, due in October 2010. *Pregnancy Verification Form*, dated April 28, 2010.

would not have the financial and emotional resources to complete her coursework, thereby causing her significant academic and professional disruption. *Supra* at 1.

Evidence of the applicant's gainful employment has been provided, establishing the applicant's critical contributions to the finances of the household as a Computer Technician, and further corroborating the applicant's spouse's assertion that without the applicant's income, she will suffer financial hardship. *Letter from* [REDACTED] In addition, evidence establishing that the applicant's spouse is currently enrolled in an academic program has been provided by counsel. [REDACTED] dated March 15, 2010.

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 Jordan to comply with his foreign residency requirement. The applicant's spouse would be required to assume the role of primary caregiver to two young children, with a third on the way, without her husband's daily presence and support. Moreover, the record indicates that the applicant's spouse is integrated into the U.S. lifestyle and educational system; she is currently completing her degree requirements 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 circumstances. Were the applicant's waiver request denied, his spouse would likely have to cease the pursuit of her studies due to financial hardship and the need to care for her children 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 Jordan 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.<sup>2</sup>

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

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<sup>2</sup> 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 Jordan for a two-year period, it is not necessary to evaluate whether the applicant's U.S. citizen children would experience exceptional hardship were the applicant to relocate abroad for a two-year period.

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.