

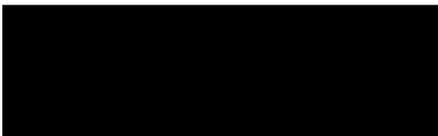
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



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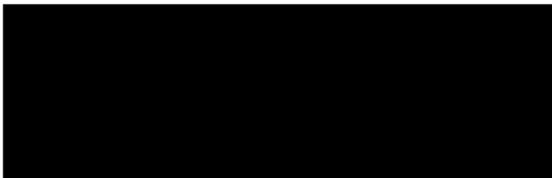


Date: **JUL 07 2011** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: 

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:



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 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 [REDACTED] obtained J-1 nonimmigrant exchange status in January 1990. 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 his two-year foreign residence requirement, based on the claim that his six U.S. citizen children would suffer exceptional hardship if they moved to Yemen 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 Yemen.

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 June 11, 2010. The application was denied accordingly.

In support of the appeal, counsel for the applicant submits a letter, dated August 6, 2010, a psychological evaluation pertaining to the applicant's son, [REDACTED], and a letter from the applicant pertaining to his son, [REDACTED]. 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 children would experience exceptional hardship if they resided in [REDACTED] for two years with the applicant. In a declaration, the applicant contends that his U.S. citizen children would suffer emotional, academic and financial hardship were they to relocate to [REDACTED] to reside with the applicant for a two-year period. The applicant explains that getting a solid education is critical, but were his children to relocate abroad, they would experience hardship as education in [REDACTED] is behind in all aspects when compared to the education in the United States. In addition, the applicant explains that if his children were to relocate abroad, they would suffer due to unfamiliarity with the language, culture and customs of the country. Further, he contends that his children would suffer due to long-term separation from all that they know, including their community, their teachers, their schools and their friends. Moreover, the applicant notes that his children have been under the care of great pediatricians in the United States but were they to relocate abroad for a two-year period, they would suffer due to lack of medical resources in Yemen. [REDACTED]

In support, a letter has been provided from [REDACTED] of [REDACTED] of the school attended by all six children, confirming that were they to relocate abroad, they would suffer due to the disruption of their education. [REDACTED] also notes that getting access to education in Yemen is a big challenge. *Letter from [REDACTED] Student Enrollment, [REDACTED] dated July 7, 2009.* In addition, a letter has been provided from [REDACTED] the family's pediatrician, confirming that the children's health will suffer if they were to move to [REDACTED] due to the problematic health infrastructure and health conditions. *Letter from [REDACTED] dated July 13, 2009.* Moreover, counsel has provided documentation regarding human rights abuses in [REDACTED]. The record also includes a psychological evaluation for Ahmed explaining the difficulties he encountered when he went to Yemen for a three month period when he was 15 years old and outlining the hardships he would face were he to reside in Yemen for a two-year period. *Psychological Evaluation from [REDACTED] dated July 7, 2010.* Finally, a letter from the applicant states that [REDACTED] is experiencing foot seizures while sleeping and needs further diagnosis and treatment.

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

The Department of State warns U.S. citizens of the high security threat level in Yemen due to civil unrest. The Department urges U.S. citizens not to travel to [REDACTED]. U.S. citizens currently in [REDACTED] should depart while

commercial transportation is available. The Department of State has ordered all eligible family members of U.S. government employees as well as certain non-emergency personnel to depart Yemen. Due to the fluid security situation in Sana'a, the Consular Section will only be able to provide emergency American citizen services. In addition, terrorism remains a serious threat in Yemen. This Travel Warning supersedes the Travel Warning for Yemen issued on March 6, 2011 to provide updated information on violent confrontations at demonstrations, increased security measures, and to note the ordered departure of non-emergency U.S. Embassy personnel and all family members.

The security threat level in Yemen is extremely high. There is ongoing civil unrest throughout the country and large-scale protests in major cities. Violent clashes are taking place in Sana'a, and may escalate without notice. Even demonstrations intended to be peaceful can turn confrontational and escalate into violence. U.S. citizens are urged to avoid the areas of demonstrations if possible, and to exercise caution if within the vicinity of a demonstration. Terrorist organizations continue to be active in Yemen, including Al-Qaeda in the Arabian Peninsula (AQAP). The U.S. government remains concerned about possible attacks against U.S. citizens, facilities, businesses, and perceived U.S. and Western interests.

Travel Warning, U.S. Department of State, dated May 25, 2011.

The record establishes that the applicant's five eldest children, natives and citizens of the United States, are 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 children at this stage of their education and relocate them to Yemen, in light of their inability to speak the language, unfamiliarity with the country's culture and customs, human rights abuses and the substandard medical care¹ in Yemen, and the U.S. Department

¹ The U.S. Department of State notes the following regarding medical care in Yemen:

Outside Sanaa and Aden, you should not expect modern medical facilities or readily available emergency ambulance services. Doctors and hospitals often expect immediate cash payment for health services. It is important to bring an adequate supply of prescription medications for the duration of your trip. While many prescription drugs are available in Yemen, the particular drug you need may not be available.

of State's warning against travel to Yemen by U.S. citizens, would constitute exceptional hardship. The hardship the applicant's U.S. citizen children would encounter were they to relocate to Yemen 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 six U.S. citizen children would suffer exceptional hardship if they remained in the United States during the period the applicant resides in Yemen. The record indicates that the applicant and his wife are J visa holders subject to the two-year foreign residency requirement. Such a requirement would leave the applicant's six children in the United States without their mother and father. The AAO concurs with the director that this situation would constitute exceptional hardship to the applicant's U.S. citizen children if they remained in the United States.

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