



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

(b)(6)

Date: **JUL 25 2014** Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Application for Waiver of the Foreign Residence Requirement (Form I-612) 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 is a citizen of Jordan who was admitted to the United States in J-1 nonimmigrant exchange status on June 18, 2010. 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) (2012), based on Public Law 94-484. The applicant seeks a waiver of his two year foreign residence requirement based on the claim that his U.S. citizen spouse would suffer exceptional hardship if he moved to Jordan temporarily with the applicant and in the alternative, if she remained in the United States while the applicant fulfilled his two year foreign residence requirement in Jordan.

The director found although the applicant established that his spouse would experience exceptional hardship if she relocated to Jordan for the two year period, the applicant did not demonstrate that his U.S. citizen spouse would experience exceptional hardship if the applicant returned to Jordan for two years without his spouse. *Director's Decision*, January 8, 2014. The application was accordingly denied.

On appeal, the applicant asserts that his U.S. citizen spouse would experience exceptional hardship in the event of a two year separation. He explains that his spouse would not be able to provide for herself and their unborn child financially, and he would not be able to support them from Jordan. The applicant also contends his spouse would suffer from exacerbated psychological difficulties without him present, given her history of anxiety, post-traumatic stress disorder ("PTSD"), and her diagnosis of major depressive disorder. The applicant lastly states that his spouse would not be able to move back in with her parents and siblings due to space constraints, financial issues, and inadequate emotional support. The applicant submits a brief, letters from family, and an evaluation from a licensed clinical social worker on appeal.

The record contains, but is not limited to: the documents listed above; evidence of birth, marriage, residence, and citizenship; documentation on the applicant's J-1 status; letters from family and friends; psychological evaluations and articles on psychological conditions; letters and other documentation on country conditions in Jordan; financial and medical records; documentation of the spouse's educational history; and photographs. 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, “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 would experience exceptional hardship if she relocated to Jordan for two years with the applicant. The director found in the January 8, 2014, decision that the applicant had demonstrated that his spouse, a native of Syria and a U.S. citizen, would experience exceptional hardship upon relocation to Jordan for the requisite two year period. The director based this finding on evidence related to the spouse’s pregnancy, her family and community ties in the United States, the loss of educational opportunities in Jordan, and documentation of violence in Jordan against U.S. citizens. There is no indication that this finding should be disturbed. Therefore, we affirm that the applicant has established that his U.S. citizen spouse would experience exceptional if she were to relocate to Jordan with the applicant to fulfill the two year foreign residence requirement.

The second step required to obtain a waiver based on hardship is to establish that the applicant’s U.S. citizen spouse would suffer exceptional hardship if she remained in the United States during the two year period that the applicant resides in Jordan. With respect to this criterion, the applicant’s

spouse asserts that were she separated from the applicant for a two year period, she would experience psychological, medical, financial, and family-related hardship.

In support, the applicant submits psychological evaluations and letters from the spouse's family members. The March 2, 2013, psychological assessment, prepared by a licensed psychologist, indicates the spouse was subject to acts of discrimination and trauma in her childhood, such as bullying due to her Muslim heritage, racist remarks, and negative reactions to an incident of childhood incontinence. The psychologist also relates that the spouse suffers from PTSD because she witnessed her father's eventful 2002 arrest. The psychologist opines that this event continues to cause nightmares, high anxiety, fear, hyper-arousal, and an adverse reaction to seeing police and guns, even on television. In the assessment, the psychologist concludes that the applicant's emotional support has helped his spouse in dealing with these issues by providing for her daily needs, and by helping her regain her composure and mitigating her anxiety. In addition, the psychologist reiterates claims made by the spouse that the applicant's support is especially important due to their cultural values, which meant that she has never lived independently, and she was raised to rely on her husband for all things, including protection and security. The February 2, 2014, psychological assessment, written by a licensed clinical social worker ("LCSW"), indicates that the applicant's spouse would have to live with her parents if the applicant returned to Jordan. The LCSW further indicates that the spouse's parents are not equipped to provide her with the emotional support she needs, nor is there room for the spouse and her future baby in the parents' three-bedroom house. A letter from the spouse's physician confirms she is pregnant, and the spouse's father states in a letter that he cannot afford to assist his daughter financially, nor is there room in his house for her and her baby given that his already large family lives there.

The spouse claims she would experience medical hardship without the applicant present, due to her pregnancy, and a mass in her breast which requires constant monitoring. The spouse's physician notes in another letter, dated September 6, 2013, that the spouse's family history puts her at an elevated risk for breast cancer, which in turn requires constant monitoring. The spouse explains she would not be able to access this required medical care without the applicant present, as she has medical insurance through the applicant's job. With respect to the spouse's own employment, she claims that she is currently earning her associate's degree, which is fully funded by the applicant's income, and that she would not be able to earn sufficient income to support her and her baby without the applicant present in the United States. A medical doctor at the [REDACTED] indicates in a letter, dated September 23, 2013, that the applicant, in light of his specialized background in interventional cardiology and structural heart disease, would have difficulties finding employment in his field in Jordan, and even if such employment were available, he may earn only \$950 a month. In addition to financial difficulties, the spouse states that she does not know how she would be able to take care of her child without the applicant present.

The applicant has provided sufficient, consistent evidence on the exceptional hardship his spouse would experience without him present for the two year foreign residency requirement. Through multiple psychological evaluations as well as letters from family and friends, the applicant has demonstrated that his spouse would suffer from exacerbated psychological conditions, such as PTSD

and anxiety, without his presence. In addition, assertions of financial hardship are supported by evidence on the spouse's present earnings, the applicant's own income in the United States, and documentation that the applicant will have difficulties financially supporting his spouse from Jordan. Furthermore, the applicant has shown that his spouse has medical conditions which require continuing treatment, and that the spouse will have difficulty accessing such treatment without medical insurance obtained through the applicant's employment in the United States. Lastly, the record contains documentation demonstrating that, in light of the spouse's upbringing, background, and cultural values, she will experience significant difficulties raising their child without the applicant present for two years.

As such, the applicant has established that his spouse would experience exceptional hardship were she to remain in the United States while the applicant relocates abroad for a two-year period.

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.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met. 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 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.