



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 21 2008

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:

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INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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 is a native and citizen of Egypt who obtained J1 nonimmigrant exchange status on July 28, 2003 to participate in graduate medical education training. She is thus 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). The applicant presently seeks a waiver of her two-year residence requirement, based on the claim that her U.S. citizen spouse 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.¹

The director determined that the applicant failed to establish that her spouse would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Egypt. *Director's Decision*, dated June 28, 2007. The application was denied accordingly.

In support of the appeal, the previous representative for the applicant² provided a brief; information about religious and country conditions in Egypt; a statement from the applicant, dated July 10, 2007; medical documentation and notes with respect to the applicant's spouse; and a letter describing the applicant's and her family's current financial situation, as well as the financial impact to the family if the waiver application is denied, dated July 18, 2007. On December 21, 2007, the applicant's counsel provided a supplemental brief, dated December 21, 2007; a letter from the applicant and her spouse, dated December 10, 2007; copies of two decisions from the AAO; select cases with respect to hardship waivers; and a copy of a hardship waiver article. The entire record was reviewed and considered in rendering this decision.

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

- (e) 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)

¹ The record indicates that the applicant's two children, [REDACTED] and [REDACTED] born in 1998 and 1995 respectively, entered the United States as J-2s, based on their derivative status as children of the applicant, a J-1 status holder. As such, the applicant's children are also subject to the two-year home residency requirement.

² The record indicates that the Form I-290, Notice of Appeal (Form I-290B), and supporting documentation was timely filed by Celeste Tabriz. However, in a letter dated December 21, 2007, Bruce A. Hake, Esq. advised the AAO that he would be representing the applicant. A properly signed Form G-28, Notice of Entry was provided.

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 spouse would experience exceptional hardship if he resided in Egypt for two years with the applicant. To support this contention, the applicant states the following:

...In the Middle East the law doesn't allow Muslim women to marry Non Muslim. Such marriage is also considered invalid if it took place in any country outside the Middle East and we would be considered not married and living in sin. Not only would that expose all of us to discrimination and potential danger but me and [the applicant's spouse] would also be violating the law and could be arrested and convicted...

My ex husband doesn't know about the marriage still...My ex husband would defiantly do anything and everything to harm us if he ever found out that we were married and that [redacted] was in the country with me. [redacted] will not be able to work while he is there and the fact that he would have worked a (sic) NASA might make him a target even though there is no proof that terrorist have done anything in Egypt the whole region is changing so fast I do not think it would be wise to say that it could not happen. The hatred for Americans is reaching an epidemic proportion that is simply incomprehensible. It's as if the whole world has gone mad.

[redacted] safety is of the utmost importance to me and he refuses to stay behind and let me return on [my] own.. [redacted] loves his job leaving it would be devastating to him, he would not be able to find another position like this any where in the world. And if anything happened to him in Egypt nothing in this the world would not be able to replace him.

Affidavit of [redacted] dated December 19, 2006.

In addition, the applicant states the following:

...Interfaith marriages are permitted except in the case of a Moslem woman and a non-Moslem man. In other words civil marriages which is done in court can only exist if the male is a Muslim and the woman is a non Muslim but a Muslim woman can not marry a non Muslim...

We can never live under the same roof as a husband and wife...If I do go back home without him, he would never be able to visit us....

Letter in Support of Appeal from [REDACTED] *dated July 10, 2007.*

The applicant's spouse echoes the concerns outlined by the applicant. As stated by the applicant's spouse,

...I would be exposed to violence in a region of the world that I have never been in; I don't speak the language, or eat the food. The fact that I am a white American male married to a Muslim woman will place my wife and our children in the direct path of danger. Terrorism as well (sic) as the possibility of kidnappings and taking me of my wife and children as hostages are all potential life threatening dangers that we will face if forced to return to a Muslim country in a non diplomatic position...

Affidavit of [REDACTED] *dated December 18, 2006.*

Counsel provides numerous documents to support the assertions made by the applicant and her spouse. In addition, the U.S. Department of State, in its Country Specific Information-Egypt, states the following:

Egypt suffered a series of deadly terrorist attacks in or near tourist sites in 2004, 2005, and 2006 – often coinciding with major local holidays. Prior to the October 2004 attack, there had been no terrorist incidents involving tourists in Egypt since the mid 1990s. Americans should be especially vigilant in crowded tourist areas in the Sinai, practice good personal security measures, and be alert to their surroundings. A heavy security presence is apparent to travelers throughout the country. Americans are encouraged to visit the U.S. Embassy in Cairo website for the most up-to-date security information.

Since October 2004, three major coordinated terrorist bombings targeting the Sinai Peninsula's tourist infrastructure caused many deaths and hundreds of injuries, mostly to Egyptian nationals. U.S. citizens do not appear to have been targeted in any of these incidents, but many non-Egyptian tourists, including Americans, were killed or injured in these attacks.

Three explosions in the town of Dahab in April 2006 killed over 20 people and wounded at least 80 additional people, including five U.S. citizens. In July 2005, three explosions in Sharm el Sheikh killed over 60 people, including one American. In October 2004, three bombs detonated in Taba and two nearby tourist camps, killing 34 people, including one American. Evidence of instability in the Sinai has also been reflected in random attacks on vehicles transiting the interior and two bomb attacks on Multinational Force Observers near the Rafah border crossing in August 2005 and April 2006.

While the Egyptian Government took measures against the perpetrators of the 2004 and 2005 attacks, the April 2006 bombings reflect a persistent, indigenous threat of terror activities in the Sinai.

Travelers seeking to cross the Egyptian-Gaza border at Rafah are likely to encounter difficulty. The border is frequently closed and re-openings are announced on short notice. Travelers wishing to cross this border should contact the American Consulate General in Jerusalem for more information on the current status of the border crossing. Travelers should also refer to the Israel, West Bank and Gaza Travel Warning before traveling to Gaza .

U.S. citizens who still plan to visit the Sinai in spite of the persistent threat of terrorist attacks should exercise great caution. As anywhere, travelers may gain a measure of safety by remaining particularly alert to their surroundings, by avoiding crowded tourist areas, and by visiting destination resorts and hotels with significant physical setback and security procedures.

In addition to the Sinai attacks, there were three terror attacks on crowded tourist destinations in Cairo in April 2005. In one, a lone suicide bomber killed three foreigners, including an American, at Cairo 's Khan el-Khalili Market. Three Americans were seriously injured in this incident.

There have been instances of instability and public disorder in some other areas of Egypt, most notably in the Nile Valley governorates of Assiut and Sohag, located between Cairo and Luxor . These governorates, along with the adjacent governorates of Minya and Qena, have been areas of extremist activity in the past. U.S. Embassy personnel traveling to these areas (apart from Luxor and adjacent tourist destinations) require advance approval. Egyptian authorities also restrict the travel of foreigners in these governorates. American citizens planning to travel in these areas should contact the Embassy prior to travel.

Public demonstrations occasionally take place in areas such as Tahrir Square in Cairo and in the vicinity of universities and mosques following the Friday noon

prayers, including the Azhar mosque across from the Khan El Khalili Bazaar area. These demonstrations are typically accompanied by a heavy security presence. Roads in the vicinity are often closed. Americans should remain attuned to readily-available English-language media outlets and avoid all public demonstrations.

Travelers to Egypt's frontiers, including the borders with Libya, Sudan, and Israel and parts of the Sinai off the main, paved roads, must obtain permission from the Travel Permits Department of the Ministry of the Interior, located at the corner of Sheikh Riham and Nubar Streets in downtown Cairo.

In addition, travelers should be aware that landmines have caused many casualties, including deaths of Americans, in Egypt. All travelers should check with local authorities before embarking on off-road travel. Known minefields are not reliably marked by signs, but are sometimes enclosed by barbed wire. After heavy rains, which can cause flooding and the consequent shifting of landmines, travelers should take care driving through build-ups of sand on roadways. Though mines are found in other parts of Egypt, the highest concentrations are in World War II battlefields along the Mediterranean coast west of Alexandria, the Eastern Desert between Cairo and the Suez Canal, and much of the Sinai Peninsula. Travelers are urged to be especially prudent in these areas...

Country Specific Information-Egypt, U.S. Department of State, Bureau of Consular Affairs, dated June 20, 2007.

Moreover, the Country Reports of Human Rights Practices for Egypt confirms that the marriage between the applicant and her spouse would be deemed illegal in Egypt, thereby confirming that they would not be able to reside together in Egypt as husband and wife and would likely be subject to imprisonment:

Rulings concerning marriage, divorce, alimony, child custody, and burial, are based on an individual's religion. In the practice of family law, the government recognizes only the three "heavenly religions": Islam, Christianity, and Judaism. Muslim families are subject to Shari'a, Christian families to Canon law, and Jewish families to Jewish law. In cases of family law disputes involving a marriage between a Christian woman and a Muslim man, the courts apply Shari'a. The government does not recognize the marriages of citizens adhering to faiths other than Christianity, Judaism, or Islam. A civil marriage abroad is an option should a Christian male and a Muslim female citizen decide to marry; however, their marriage would not be legally recognized in the country. A female Muslim citizen in such a situation could be arrested and charged with apostasy, and any children from such a marriage could be taken and assigned to the

physical custody of a male Muslim guardian, as determined by the government's interpretation of Shari'a.

Country Reports on Human Rights Practices-Egypt, Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, dated March 6, 2007.

Based on the documentation provided, the AAO finds that the hardship the applicant's spouse 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 home residency requirement. The record indicates that the applicant's spouse has never lived outside the United States, nor is he able to speak, read or write in the native language. Moreover, based on the fact that a marriage between a non Muslim man and a Muslim woman is not acceptable under Islamic law, the applicant's spouse would never be able to reside in Egypt with the applicant as husband and wife; in fact, he and/or his spouse would likely be imprisoned if they are together. Finally, the applicant's spouse would be exposed to political and religious turmoil in Egypt, and would be constantly concerned for his own security. The AAO thus concludes that the applicant's U.S. citizen spouse would experience exceptional hardship were he to accompany the applicant to Egypt for a two-year term.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would suffer exceptional hardship if he remained in the United States during the two-year period that the applicant and her children reside in Egypt. As stated by the applicant and her spouse,

... We have been married for the past year and a half, and prior to that time dated for two years. Our children, [REDACTED] and [REDACTED] know [REDACTED] as their real father, as they only see their biological father once a year. It is our intent to be together as a family... We have no doubt that others will agree that providing a proper family atmosphere and structure is critical for the well-being of all family members...

The final reason we beg for your consideration for this waiver concerns [REDACTED]'s son and [REDACTED]'s stepson [REDACTED] [REDACTED] has Attention Deficit Hyperactivity Disorder (ADHD) and Asperger's syndrome, a mild form of autism. [REDACTED] is under treatment of a child psychiatrist, and currently takes medication daily because of his mental illness. He is also receiving behavior modification training from a child psychologist... [REDACTED] simply cannot receive the treatments that allow him to live such a full and normal life if he were forced to return to the Middle East...

Letter in Support of Appeal, dated December 10, 2007.

Moreover, counsel states the following:

...Mr. [REDACTED] [the applicant's spouse] has suffered from a divorce in the past, his father died of cancer last year, and he has also suffered from clinical depression, requiring medication. Such factors make him more vulnerable to psychological stresses than the average husband. In this case, if a waiver is not granted, he will face extremely serious psychological stress, because there is a objectively high chance that his wife and beloved stepchildren could be killed or harmed in Egypt...Moreover, under Egyptian law, it would be trivial for the stepchildren's natural father to claim custody, thus depriving a U.S. citizen from the love and support of two beloved stepchildren for a lifetime...

Supplemental Brief, dated December 21, 2007.

The AAO notes that although medical notes with respect to the applicant's spouse's mental health and his diagnosis of depression were submitted, said notes do not clearly establish the applicant's spouse's current mental health situation, its short and long-term treatment plan and its severity. Nevertheless, the applicant's spouse's mental state, combined with the fears and anxieties experienced by him with respect to his spouse's and step-children's anticipated return to Malaysia, lead to the conclusion that the applicant's departure for a two-year period would cause the applicant's spouse extreme emotional and psychological hardship.

The AAO finds that the applicant has established that her U.S. citizen spouse 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. As such, upon review of the totality of circumstances in the present case, the AAO finds the evidence in the record establishes the hardship the applicant's spouse would suffer if the applicant temporarily departed the U.S. for two years would go significantly beyond that normally suffered upon the temporary separation of families.

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 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.