MATTER OF CRUIKSHANK

In Section 212(e) Proceedings

A-14211831

Decided by District Director January 21, 1966

An exchange visitor from Afghanistan, a Moslem, is granted a waiver of the foreign residence requirement of section 212(e), Immigration and Nationality Act, as amended, since compliance therewith would result in exceptional hardship to her non-Moslem, United States-citizen husband and child who, it is likely, would be subject to persecution because of their nationality and religion, if they accompanied her abroad; should she depart without her husband, economic hardship would result as the only source of family income is $250 per month from a part-time job held by applicant's husband, a student, and he is financially unable to defray transportation abroad for applicant and their child; further, since her family is not pleased with her marriage, she doubts they would permit her to reside with them.

Discussion: The applicant, Nooria Noor Cruikshank, is twenty-five years of age, a native and citizen of Afghanistan. She was admitted to the United States under her maiden name, Nooria Noor as an exchange visitor on November 28, 1962, sponsored by the Agency for International Development to study home economics for a period of two years under Exchange Visitor Program No. G-II-100. She attended the University of Arizona, Tucson, Arizona, and was granted an extension of stay by this Service until November 27, 1964. Her sponsor refused to issue her a Form DSP-66 requesting another extension of stay in November 1964 because she had married a United States citizen. She would require three more years of study to obtain her degree in home economics.

Satisfactory evidence of Mrs. Cruikshank's marriage on May 20, 1964 to a United States citizen and of the birth in the United States of their child, Paul, on November 9, 1964 has been submitted.

The applicant resides in Tucson, Arizona with her United States citizen husband and child. Her husband is a student at the University of Arizona and has a part-time job from which he earns $250 per month. His wages are their only source of income and he is not

financially able to pay transportation for the applicant and their child to Afghanistan. Her family is not pleased with her marriage and she doubts if they would permit her to reside with them. The applicant has married outside her Moslem religion and she fears that should her husband and son return to Afghanistan with her they would suffer extreme hardship and possibly physical harm as her country is a strong Moslem country and the people feel strongly about Moslems marrying non-Moslems. She states that she would not feel safe living there with her son should her husband remain in this country.

The State Department has advised that in response to a request from Washington headquarters of the Agency for International Development, the alien's sponsor under its Exchange Visitor Program, the Mission in Kabul replied that the problems which would arise upon Mrs. Cruikshank's return to Afghanistan would far offset any benefit which might derive from fulfillment by the alien of the foreign residence requirement if her American and non-Moslem husband and child accompanied her.

In view of the economic hardship involved and the likelihood that residence in the applicant's native country would subject her spouse and child to persecution because of their religion and nationality, it has been determined that compliance with the foreign residence requirement of section 212(e) of the Immigration and Nationality Act, as amended, would impose exceptional hardship upon Mrs. Cruikshank's United States citizen spouse and child. The Secretary of State has recommended that the foreign residence requirement be waived. It is found that the admission of the applicant would be in the public interest.

ORDER: It is ordered that the application of Nooria Noor Cruikshank for a waiver of the two-year foreign residence requirement of section 212(e) of the Immigration and Nationality Act, as amended, be granted.