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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor.
Washington, D.C. 20536



FILE: [Redacted]

Office: Miami

Date: 14 AUG 2002

IN RE: Applicant: [Redacted]

APPLICATION: Application for Adjustment of Status under Section 902 of Pub. L. 105-277, Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida, and was certified to the Associate Commissioner for Examinations for review. The acting district director's decision will be affirmed.

The applicant is a native and citizen of Haiti who was paroled into the United States indefinitely on November 1, 1995. The applicant is applying for status as a permanent resident under section 902 of the Haitian Refugee Immigrant Fairness Act of 1998, Pub. L. 105-277 (HRIFA). Upon subsequent medical examination he was found to be inadmissible to the United States under section 212(a)(1)(A)(i) of the Act, 8 U.S.C. 1182(a)(1)(A)(i), as an alien who is determined to have a communicable disease of public health significance. The applicant filed the above application seeking a waiver of this ground of inadmissibility.

The acting district director denied the application after determining the applicant failed to demonstrate accountability in complying with the medical requirements and behavioral precautions necessary in managing his disease.

The applicant has failed to respond to the certification.

Section 902 of HRIFA provides, in part, that:

(c) a Haitian national who described in paragraph (b) (1) of this section is eligible to apply for adjustment of status under the provisions of section 902 of HRIFA if the alien meets the following requirements.

(3) The alien is not inadmissible to the United States for permanent residence under any provisions of section 212(a) of the Act, except as provided in paragraph (e) of this section.

Section 212(a)(1)(A)(i) of the Act provides that any alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with etiologic agent for acquired immune deficiency syndrome, is inadmissible.

HIV has been determined by the Public Health Service to be a communicable disease of public health significance. 42 C.F.R. 34.2(b)(4). Aliens infected with HIV, however, upon meeting certain conditions, may have such excludability waived.

Section 212(g)(1) provides that the Attorney General may waive subsection (a)(1)(A)(i) in the case of any alien who-

(A) is a spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen,

or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa, or

(B) has a son or daughter who is a United States citizen or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human services, may by regulation prescribe.

The applicant is the father of a child born in the United States in September 1998.

8 C.F.R. 245.15(e)(2) provides in part that in considering an application for waiver of inadmissibility under section 212(g) of the Act for an otherwise eligible applicant for adjustment of status under HRIFA who was paroled into the United States from the U.S. Naval Base at Guantanamo Bay, for the purpose of receiving treatment of an HIV or AIDS condition, the fact that his or her arrival in the United States was as the direct result of a government decision to provide such treatment should be viewed as a significant positive factor when weighing discretionary factors.

The record reflects that the applicant was given a medical examination on June 21, 1995, at Guantanamo Bay and he was diagnosed as being HIV positive. On November 1, 1995, he was paroled into the United States. The applicant submitted copies of his medical examinations dating back to July 11, 1996. Subsequent examinations and evaluations indicate that the applicant is not interested in taking the prescribed medication, or has stopped taking the medications shortly after receiving them. On the last recorded visit in June 1999, he told the attending physician that he stopped taking the medications months ago.

Although documentation in the record indicates that the applicant is covered for all outpatient medical care, laboratory testing, and medication if he brings the proper documentation necessary to remain a patient at the Center, he has willingly failed to cooperate with the attending physicians and to follow their professional advice regarding his disease. It is concluded that the acting district director's determination that the applicant does not warrant a favorable exercise of the Attorney General's discretion, is correct and that decision will be affirmed.

ORDER: The decision of the acting district director is affirmed, and the application is denied.