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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: AUG 20 2002

IN RE: Applicant:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under
Section 212(g) of the Immigration and Nationality Act, 8 U.S.C.
1182(g)

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 application for waiver of grounds of inadmissibility was denied by the District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The applicant is a native and citizen of Haiti who attempted to enter the United States unlawfully by boat in January 1994. On April 7, 1995, an immigration judge denied her applications for asylum and withholding of deportation and ordered her excluded and deported. That decision was affirmed by the Board of Immigration Appeals (BIA) on October 26, 1995. The applicant seeks to have her status adjusted to that of lawful permanent resident under section 902 of the Haitian Refugee Immigrant Fairness Act of 1998, Pub.L. 105-277 (HRIFA). The district director found the applicant inadmissible to the United States under section 212(a)(1)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(1)(A)(i), because she was afflicted with a communicable disease of public health significance, namely human immunodeficiency virus (HIV). The applicant seeks the above waiver under section 212(g) of the Act, 8 U.S.C. 1182(g), as the spouse of a lawful permanent resident.

The record indicates that the applicant's spouse, [REDACTED], died in July 1995. The applicant married [REDACTED] in March 1998.

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 inadmissibility waived.

Pursuant to the waiver application on which the applicant indicated that she had no relatives, the district director denied the application for lack of a qualifying relative.

On appeal, the applicant states that her husband was unable to sign the waiver application for her. The applicant attached copy of [REDACTED] Alien Registration Card and a letter in which he states that he has been separated from his wife for some time but he is willing to sign the waiver for her. [REDACTED] states that the applicant did not know where he was and he listed his Fort Lauderdale address and telephone number.

Section 212(a)(1)(A) of the Act provides, in part, that any alien-

- (i) 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 the etiologic agent for acquired immune deficiency syndrome, is inadmissible.

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

(A) is the 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 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....

Service instructions provide that an applicant who is inadmissible under section 212(a)(1)(A)(i) of the Act because of HIV Infection must demonstrate the following criteria will be met if a waiver is to be approved.

(a) the danger to the public health of the United States created by the alien's admission is minimal;

(b) the possibility of the spread of the infection created by the applicant's admission is minimal; and

(c) there will be no cost incurred by any level of government agency of the United States without prior consent of that agency.

Evidence considered sufficient to meet the discretionary criteria include, but are not limited to: (a) evidence that the applicant has arranged for medical treatment in the U.S.; (b) the applicant's awareness of the nature and severity of his or her medical condition; (c) the applicant's willingness to attend educational seminars and counseling sessions; (d) the applicant's knowledge of the modes of transmission of the disease; and (e) formal consent by a U.S. government agency to provide medical treatment to the applicant.

The applicant submitted a form signed by Dr. Candig indicating that satisfactory financial arrangements have been made, and the record reflects that the applicant is still married to a lawful permanent resident although they are not living together. Therefore, it is concluded that the applicant has provided the required documentation in this matter to establish her eligibility for the benefit sought. Therefore, the appeal will be sustained.

ORDER: The appeal is sustained. The district director's decision is withdrawn, and the application is approved.