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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[Redacted]

MAY 23 2003

FILE: [Redacted] Office: Newark

Date:

IN RE: Applicant:

[Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey, and is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who was interviewed on August 21, 2001, in connection with his Application to Register Permanent Residence or Adjust Status. He was found to be 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), as an alien who is determined to have a communicable disease of public health significance. Therefore, he is required to obtain a waiver of that ground of inadmissibility under section 212(g) of the Act, 8 U.S.C. § 1182(g).

During his interview, he indicated that he used a fraudulent passport to procure admission into the United States on January 21, 2000. He was found to be inadmissible to the United States under present section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud. Therefore, he is also required to obtain a waiver of that ground of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1181(i).

The applicant submitted a Form I-601 waiver application and claimed eligibility for the waiver by listing his naturalized U.S. citizen sister. The district director denied the application after concluding that the applicant was ineligible for the waiver because his sister was not a qualifying relative.

On appeal, counsel submits a copy of a Resident Alien Card belonging to [REDACTED] and statements indicating that she is the applicant's mother. The record does not contain the applicant's birth certificate to support that assertion. Counsel asserts that the Bureau decision precludes the applicant from adjusting his status when he is HIV positive and it is against public policy for someone in his situation not to be able to obtain the required health benefits, protect himself and protect the rest of the population.

Section 212(a)(1)(A) of the Act provides 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.

Human immunodeficiency virus (HIV) is defined by the Public Health Service as such a dangerous contagious disease. 42 C.F.R. § 34.2(b)(4). However, applicants infected with HIV may, in certain instances, have such inadmissibility waived.

Section 212(g) provides that the Attorney General may waive the application of-

(1) 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;

(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; or

(C) qualifies for classification under clause (iii) or (iv) of section 204(a)(1)(A) or classification under clause (ii) or (iii) of section 204(a)(1)(B).

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.

The record is devoid of evidence that these three conditions will be met if the waiver is granted.

Section 212(a)(6)(C) of the Act provides, in part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General, waive the application of clause (i) of

subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

The record is devoid of evidence that [REDACTED] is the applicant's mother.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden in establishing his eligibility for either waiver. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.