



U.S. Citizenship
and Immigration
Services

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ADMINISTRATIVE APPEALS OFFICE
20 MASS. AVE. N.W., RM. A3042
WASHINGTON, DC 20529

PUBLIC COPY

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FILE:



Office: LOS ANGELES (SANTA ANA)

Date: JUN 20 2006

IN RE:



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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Cuba who 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. The applicant seeks a waiver of inadmissibility pursuant to section 212(g) of the Act, 8 U.S.C. § 1182(g), in order to remain in the United States with his U.S. citizen child and other family members.

The district director denied the application due to the fact that the applicant failed to respond to a request for evidence within the allotted period of time. *Decision of the District Director*, dated December 31, 2004.

On appeal, the applicant asserts that he is entitled to have his inadmissibility waived based on humanitarian grounds and in order to preserve family unity. *Statement from Applicant on Form I-290B*, dated February 9, 2005.

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 is inadmissible.

Human Immunodeficiency Virus (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.

Section 212(g)(1) of the Act provides, in part, that the Attorney General may waive such inadmissibility in the case of an individual 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.

An applicant who meets this statutory requirement must also demonstrate that the following three conditions will be met if a waiver is granted:

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

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

(3) There will be no cost incurred by any government agency without prior consent of that agency.

Immigrant Waivers for Aliens Found Excludable Under Section 212(a)(1)(A)(i) of the Immigration and Nationality Act Due to HIV Infection, Aleinikoff, Exec. Assoc. Comm., HQ 212.3-P (Sept. 6, 1995); *Citizenship and Immigration Services Adjudicator's Field Manual*, Chapter 41.3(a)(2)(E)(March 2006).

The regulation at 8 C.F.R. § 103.2(b)(13) states the following:

Effect of failure to respond to a request for evidence or appearance. If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied.

In this case, the applicant's medical examination shows he had tested positive for HIV infection. The applicant submitted a Form I-601 waiver application on January 27, 2003. In support of his request for a section 212(g) waiver, the applicant submitted: a police certificate from the State of California; a copy of the applicant's marriage certificate; copies of the results of the applicant's medical examinations; a copy of the applicant's birth certificate, and; a copy of the applicant's daughter's birth certificate.

On September 21, 2004, the district director issued a Form I-72 requesting that the applicant provide additional evidence within 12 weeks. Specifically, the district director requested the following: 1) complete parts A, B, C, and D of the supplemental page of Form I-601; 2) evidence that the applicant has been accepted into a California major health risk medical insurance program, including documentation that the program is aware of his HIV status; 3) a copy of the print-out of the Western Blot Test results confirming the applicant's HIV positive status, and; 4) copies of records of the applicant's medical treatment for HIV.

The applicant failed to respond to the director's request for evidence within the allotted 12 week period. Thus, the district director deemed the application abandoned and denied it pursuant to the regulation at 8 C.F.R. § 103.2(b)(13).

On appeal, the applicant asserts that he is entitled to have his inadmissibility waived based on humanitarian grounds and in order to preserve family unity. *Statement from Applicant on Form I-290B*, dated February 9, 2005. The applicant now submits a copy of the district director's request for evidence with some of the requested evidence, including documentation regarding his eligibility for state-sponsored health insurance, a questionnaire related to his current condition, and an addendum to Form I-601 required for those infected with HIV.

The regulation states that the applicant shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the application is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the application. 8 C.F.R. § 103.2(b)(14).

Where, as here, an applicant has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the applicant had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Based on the foregoing, the district director had discretion to deem the application abandoned pursuant to 8 C.F.R. § 1-3.2(b)(13). The director's denial will not be disturbed.

It is noted that the district director's request for evidence was reasonably focused on documentation relating to the applicant's current health status and medical treatment. The requested documentation would have reflected whether the applicant is currently receiving treatment, such that the danger to public health and likelihood that the applicant's infection would spread are minimal. The documentation further would have reflected whether a U.S. government agency is likely to bear costs relating to the applicant's condition without its consent. Thus, the district director requested material information and documentation that relates to material lines of inquiry. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The applicant has not submitted sufficient, timely documentation to establish that he meets the three conditions listed above in regard to the section 212(g) waiver.

In proceedings for application for a waiver of grounds of inadmissibility under sections 212(g) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.