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U.S. Department of Homeland Security
20 Mass. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H1

[Redacted]

FILE:

[Redacted]

Office: ATLANTA, GA

Date:

APR 26 2007

IN RE:

[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)

ON BEHALF OF APPLICANT:

[Redacted]

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, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India 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's medical examination shows he tested positive for the human immune deficiency virus (HIV). The applicant is the beneficiary of an approved immigrant petition for an alien worker (Form I-140). The applicant seeks a waiver of the bar of admission provided under section 212(g) of the Act, 8 U.S.C. § 1182(g), in order to reside in the United States.

The district director concluded that the applicant did not qualify for a waiver under section 212(g) of the Act and denied the Application for Waiver of Grounds of Excludability accordingly. *Decision of the District Director*, dated November 14, 2006.

On appeal, the applicant asserts that his employer is willing to continue his employment, that his health care needs have been addressed, that his family has become acculturated to the United States and that there would be possible repercussions if his family were to be removed as he and his wife are members of a religious minority in the area to which they would relocate. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO)*, dated December 8, 2006.

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.

The human immunodeficiency virus has been determined by the U.S. Public Health Service to be a communicable disease of public health significance. 42 C.F.R. § 34.2(b)(4). However, aliens infected with HIV may have such inadmissibility waived upon meeting certain conditions.

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,

(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; or

(C) qualifies for classification under clause (iii) or (iv) of section 1154(a)(1)(A) of this title or classification under clause (ii) or (iii) of section 1154(a)(1)(B) of this title;

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.

On his waiver application, the applicant does not indicate that he is the spouse, child or parent of a U.S citizen or lawful permanent resident (LPR). A review of the documentation in the record also fails to establish the existence of a qualifying relationship with a U.S. citizen or LPR. Neither is the applicant qualified for classification under section 204(a)(1)(A) or (B) of the Act. The approved Form I-140 filed by his employer was granted under section 203(b)(3)(A)(i) of the Act. Accordingly, the applicant has neither the qualifying relationship nor the classification required to seek a waiver of inadmissibility. The appeal will be dismissed.

In reviewing the record, the AAO finds that the applicant in the present case submitted the Form I-690, Application for Waiver of Grounds of Excludability, which is used to apply for waivers in cases involving the adjustment of special agricultural workers and legalized aliens under sections 210 and 245A of the Act respectively. The appropriate form for seeking a waiver of inadmissibility in the present case is the Form I-601, Application for Waiver of Grounds of Inadmissibility. The AAO also finds that while the applicant and his wife each submitted a Form I-290B to Citizenship and Immigration Services, the record indicates the filing of only one fee, which was assigned to the present case. In the absence of a fee, the AAO will not consider the appeal filed by the applicant's spouse. However, it notes that the applicant's spouse, like the applicant, also lacks the qualifying relationship or classification to apply for a waiver of inadmissibility under section 212(g) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(1)(A)(i) 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.