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U.S. Citizenship  
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Services

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[REDACTED]

411

FILE:

Office: LOS ANGELES, CA

Date:

**MAR 20 2006**

IN RE:

[REDACTED]

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:

[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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The District Director, Los Angeles, CA denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(1)(A)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(1)(A)(i), as an alien determined to have a communicable disease of public health significance. The applicant seeks a waiver of inadmissibility under section 212(g) of the Act, 8 U.S.C. § 1182(g).

The district director denied the application for waiver after determining that the applicant did not have a qualifying relative at the time the application was submitted.

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.

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.

In this case, the applicant's medical examination shows he had tested positive for HIV infection, and that the results of the serological examination for HIV were confirmed by a "Western Blot" test conducted on February 1, 2000.

On appeal, the counsel submitted a brief, a copy of a marriage certificate between the applicant and [REDACTED] [REDACTED] dated July 7, 2004, along with a declaration by [REDACTED] a.k.a. [REDACTED]

The application for waiver was filed on October 18, 2000. On the application, the applicant failed to list any qualifying relatives through whom he was claiming eligibility for the waiver. There is no evidence in the record to indicate that the applicant had any qualifying relatives on June 8, 2004 when the decision on the application for waiver was made. Therefore, as the applicant was statutorily ineligible for a waiver of inadmissibility when the application was made, the decision of the district director was correct and the appeal will be dismissed.

The appeal is dismissed without prejudice. The applicant has the option of applying again for a waiver on Form I-601 and demonstrating that he now meets the eligibility requirements as stated in INA § 212(g).

In proceedings for application for a waiver of grounds of inadmissibility under section 212(g) of the Act, the burden of proving eligibility is on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant did not meet his burden of establishing eligibility for the waiver. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.