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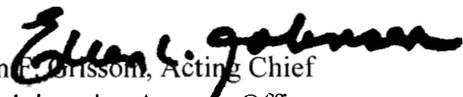
PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(g) of the Immigration and Nationality Act, 8 U.S.C. § 1182(g)

ON BEHALF OF PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John C. Brisson, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria 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 her U.S. citizen daughter and other family members.

The district director denied the application due to the fact that the applicant had failed to establish that she was not likely to become a public charge. *Decision of the District Director*, dated September 21, 2006.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services erred in requiring the applicant to provide detailed information regarding the type of assistance she is receiving and who will be responsible for the costs incurred for these services. *Brief in Support of Appeal* at 3. Counsel states that the applicant established eligibility for the waiver by submitting evidence that she is receiving counseling regarding her condition and is willing to take classes about the transmission of HIV. *Brief* at 4. Counsel asserts that requiring detailed information about the payment for the care received is beyond what is required by DHS policy. *Id.* Counsel further states that the clinic where the applicant receives her care receives private funding as well as government funding, and asserts that the clinic has given its prior consent to provide care to the applicant by providing assistance to her with knowledge of her lack of immigration status. *Brief* at 4-5. In support of the waiver application and appeal, counsel submitted letters from a clinic where the applicant receives medical care, an agency that provides supportive services and counseling, and the applicant's daughter, who states she supports the applicant financially. The entire record was reviewed and considered in arriving at a decision on the appeal.

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).

In this case, the record reflects that the applicant is a sixty-eight year-old native and citizen of Nigeria who has resided in the United States since December 14, 1998, when she entered as a B-2 visitor for pleasure. The applicant's medical examination shows she had tested positive for HIV infection, and she submitted a Form I-602, which was accepted by the district director as a Form I-601 waiver application, on March 7, 2005. The record further reflects that the applicant's daughter is a forty-four year-old native of Nigeria and citizen of the United States.

On appeal, counsel asserts that the applicant has established that the clinic where the applicant is receiving treatment has given its prior consent to treat the applicant with government funding. Counsel states that the clinic and agency that provide medical care and supportive services to the applicant are private agencies that also receive government funding. Counsel further states: "Since these agencies have provided [redacted] with assistance knowing her lack of immigration status and according to their own policies and procedures, it should be held that they have given their prior consent to providing services to [redacted] as stated in their letters on behalf of [redacted]" *Brief* at 5. The AAO notes that the letters from these agencies do not state the source of their funding, whether the applicant is receiving any government assistance, or whether the program is giving prior consent to pay for the applicant's treatment. There is no evidence on the record to indicate how the applicant is paying for the medical care she is receiving and whether any government agency has given its prior consent for any costs incurred by that agency for her care. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988);

Matter of Laureano, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The documentation submitted is insufficient to establish that no cost will be incurred by any government agency without prior consent of that agency and the applicant therefore has not established that she meets all of the 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.