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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: SAN BERNARDINO Date:

MAY 18 2010

IN RE:



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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Bernardino, California, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot.

The applicant is a native and citizen of Uganda 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 individual with a communicable disease of public health significance (HIV infection.) 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 husband.

The field office director found that the applicant failed to establish that her husband would experience extreme hardship should she depart the United States, and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated December 20, 2007.

On appeal, the applicant asserts that her HIV infection is under control and that her family members will suffer extreme hardship if she departs the United States. *Statement from Applicant on Form I-290B*, dated January 8, 2008.

Upon review, the applicant is no longer inadmissible under section 212(a)(1)(A)(i) of the Act due to her infection with HIV. As of January 4, 2010, HIV infection no longer renders an applicant inadmissible under section 212(a)(1)(A)(i) of the Act, as the regulation at 42 C.F.R. § 34.2(b) was amended to remove HIV infection from the definition of “communicable disease of public health significance.” 74 Fed. Reg. 56547 (November 2, 2009). Accordingly, the applicant is no longer inadmissible under section 212(a)(1)(A)(i) of the Act due to her HIV infection, and she does not require a waiver of inadmissibility under section 212(g) of the Act. As the applicant is not inadmissible under another provision of the Act that is waivable pursuant to a Form I-601 application, the present matter is moot.

The record further shows that, on December 28, 2005, the applicant filed the present Form I-601 application for a waiver incident to a Form I-485 application to adjust her status to permanent resident. However, United States Citizenship and Immigration Services (USCIS) found that the applicant’s Form I-485 application was accepted in error, as the applicant was under the jurisdiction of the United States Executive Office for Immigration Review. Specifically, the applicant was in removal proceedings as of the date she filed her Forms I-601 and I-485 applications pursuant to an Order to Show Cause issued on December 3, 1996.¹

As the applicant’s Form I-601 was incident to her Form I-485 application, once the Form I-485 application was rejected, the waiver application became moot. This represents another basis for dismissal of the present appeal.

¹ An Immigration Judge issued an order on May 20, 1999 granting the applicant voluntary departure until August 19, 1999. Yet, the applicant failed to depart within the permitted period, and she was scheduled for deportation on October 26, 1999. The applicant failed to appear for deportation.

Based on the foregoing, the applicant is not inadmissible under section 212(a)(1)(A)(i) of the Act, she does not require a waiver of inadmissibility under section 212(g) of the Act, and her Form I-601 application for a waiver is moot.

ORDER: The appeal is dismissed.