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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

**PUBLIC COPY**

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



File:

Office: California Service Center

Date:

JUL 21 2013

IN RE: Applicant:

Application: Application for Temporary Resident Status pursuant to Section 210 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:



Identifying data deleted to  
prevent clearly unwarranted  
disclosure of information

INSTRUCTIONS:

Attached is the decision rendered on your appeal. The file has been returned to the Service Center that processed your case. If your appeal was sustained, or if your case was remanded for further action, the Service Center will contact you. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application for waiver of inadmissibility and the application for temporary resident status as a special agricultural worker were recommended to be granted by the Director, California Service Center. The decisions were certified for review to the Administrative Appeals Office (AAO). The decisions were reversed by the AAO, and both the application for waiver of excludability and the application for temporary resident status were denied. The matter is now reopened by the AAO, and the waiver application will be granted. The application for temporary resident status as a special agricultural worker shall be remanded for further consideration and action.

The director found the applicant to be inadmissible under section 212(a)(6) of the Immigration and Nationality Act (Act), [subsequently renumbered as section 212(a)(1)(A)(i)], due to a seropositive test for human immunodeficiency virus (HIV) antibodies. The applicant submitted an application for waiver of inadmissibility (Form I-690). The director recommended granting the waiver of inadmissibility because it was concluded the applicant had submitted sufficient evidence in support of the waiver application. Based on the waiver of inadmissibility, the director recommended that the application for temporary resident status as a special agricultural worker be granted, and subsequently certified those decisions for review.

Applicants for temporary resident status must be admissible to the United States. 8 C.F.R. § 210.3(a). According to section 212(a)(1)(A)(i) of the Act, applicants who are infected with a communicable disease of public health significance are inadmissible. Human immunodeficiency virus (HIV) is defined as such a communicable disease. 42 C.F.R. § 34.2(b)(4). However, applicants infected with the HIV may, upon meeting certain conditions, have such inadmissibility waived.

Pursuant to outstanding Service (now the Bureau) instructions, an applicant who is inadmissible under section 212(a)(1)(A)(i) of the Act, due to HIV infection, must demonstrate the following three conditions have been met if a waiver is to be granted and he is eligible for temporary resident status:

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

If the applicant meets these criteria, the Attorney General may waive such inadmissibility in the case of individual aliens for

humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. 8 C.F.R. § 210.3(e)(2).

After reviewing the evidence submitted by the applicant in support of the application for waiver of inadmissibility, the director concluded the documentation showed the conditions for granting the waiver had been met.

The director's decision was substantiated by the evidence in the record in the following manner as it relates to the first two of the three criteria cited above. The documentation submitted establishes the applicant is aware of the serious public health implications of his condition, has received counseling and education related to his HIV positive status, and is following accepted health care guidelines. While the director concluded that the applicant had submitted sufficient documentation to comply with the third condition noted above, a review of the record revealed that the applicant failed to establish that there will be "no cost incurred by any government agency without its prior consent" if the waiver application was to be granted. The AAO concluded that the applicant did not establish that a favorable exercise of discretion in granting a waiver of inadmissibility under section 212(a)(1)(A)(i) of the Act was warranted. Therefore, the decision of the director recommending approval of the waiver, and the decision recommending approval of the application for temporary resident status as a special agricultural worker were reversed, and both the waiver application and the application for temporary resident status were both denied.

Pursuant to 8 C.F.R. § 103.5(b), the AAO will *sua sponte* reopen or reconsider a decision under section 210 of the Act when it determines that manifest injustice would occur if the prior decision were permitted to stand. *Matter of O-*, 19 I & N Dec. 871 (Comm. 1989)

The record verifies the applicant's stable employment history. Through the submission of a Kaiser Permanente Health Plan identification card bearing his name, the applicant has demonstrated that he possesses health insurance coverage as provided through his employer. The evidence submitted by the applicant establishes that no government agency will incur costs without prior consent of that agency as a result of granting the applicant's waiver.

Public interest and humanitarian grounds support the granting of a waiver in this case. Accordingly, after full review of this matter, it is concluded that the applicant has demonstrated a waiver of inadmissibility under section 212(a)(1)(A)(i) of the Act may be granted. Therefore, the decision recommending approval of the application for waiver of grounds of inadmissibility shall be affirmed. The application for temporary resident status as a

special agricultural worker shall be remanded in order for the director to complete the adjudication of the application and obtain a new set of fingerprints for current processing from the applicant.

**ORDER:** The decision to recommend that the application for waiver of grounds of inadmissibility be approved is affirmed. The application for temporary resident status as a special agricultural worker is remanded for adjudication.