U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 1 0 2004

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT: Self-represented

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. 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

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DISCUSSION: The applications for temporary resident status, and for waiver of inadmissibility, were denied by the Director, Western Service Center. They are now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director noted that the applicant had tested positive for human immunodeficiency virus (HIV) infection. Consequently, he found the applicant inadmissible under section 212(a)(6) of the Act, now section 212(a)(1)(A)(i), as an alien afflicted with a dangerous contagious disease. The director denied the application for waiver of inadmissibility because the applicant did not submit sufficient evidence of eligibility. He then denied the application for temporary resident status because the applicant is inadmissible.

Applicants for temporary residence must be admissible to the United States. Section 210(a)(1)(C) of the Act. According to section 212(a)(1)(A)(i) of the Act, applicants who are infected with a dangerous contagious disease are inadmissible. Human immunodeficiency virus (HIV) is defined as such a dangerous contagious disease. 42 C.F.R. § 34.2(b)(4). However, applicants infected with HIV may, in certain instances, have such inadmissibility waived.

Pursuant to outstanding instructions, an applicant who is inadmissible under section 212(a)(1(A)(i), due to HIV infection, must demonstrate the following three conditions will be met if a waiver is granted and he is granted temporary residence:

(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.

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. Section 210(c)(2)(B)(i) of the Act.

In this case, the director advised the applicant of his inadmissibility and that such inadmissibility could only be waived if proof was offered that the above conditions were met. In response, the applicant completed and filed the Application for Waiver of Inadmissibility (Form I-690) and attached his own brief statement. Regarding the first two conditions, relating to the danger to the public health and the possibility of the spread of the disease, the applicant simply indicated that he offered no danger to the public, and would not spread the disease. He asserted that no costs would be incurred for any medical treatment, and mentioned that he had health insurance.

The director concluded the applicant had not shown that he met the above criteria, and denied the waiver application and the temporary residence application.

On appeal the applicant stresses that he lives a monogamous life with his wife, and that their private sexual practices protect her from the possibility of the infection. He points out that his entire family lives in the United States. He also reiterates that he has been insured for a number of years.

The applicant has not, throughout this proceeding, submitted any documentary evidence in support of the waiver application. He has not provided any specific, detailed statement on his own behalf which explains what medical treatment he is receiving. No evidence has been submitted from any medical authority to establish that the danger created by the applicant to the public health and the possibility of the spread of the disease by the applicant are minimal. No evidence has been furnished to demonstrate that the applicant has received the appropriate counseling.

While the applicant indicates that he intends to meet future medical costs through his insurance coverage, he has not provided evidence of such coverage, much less the level of coverage. Such evidence could help to establish that no cost would be incurred by a government agency without its prior consent due to the applicant's disease.

The record contains no further explanation or evidence in support of the waiver application. Accordingly, after full review of this matter, it is concluded that the applicant has failed to demonstrate that a waiver of inadmissibility under section 212(a)(1(A)(i) of the Act should be granted.

ORDER: The appeal is dismissed. The application for waiver, and the application for temporary residence, remain denied.