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U.S. Citizenship
and Immigration
Services

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[redacted]

MAY 27 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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, 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

DISCUSSION: The decisions in this matter to deny both the waiver application and the application to adjust status from temporary to permanent resident have been certified by the Director, Western Service Center. The decisions will be affirmed.

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 adjustment to lawful permanent resident status because the applicant is inadmissible. The director subsequently certified these decisions for review.

Applicants for adjustment from temporary to permanent residence must be admissible to the United States. Section 245A(a)(4)(A) 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 8 C.F.R. § 245a.3(d)(4), 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 adjustment of status from temporary to permanent 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 245A(d)(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 had taken all necessary

measures to prevent contamination of other people. He addressed the third point, concerning costs, by stating that he agreed to cover all expenses.

The applicant did not submit any documentary evidence in support of the waiver application. The applicant has not provided any specific, detailed statement on his own behalf which demonstrates that he has a clear understanding of the virus and the health guidelines he must follow. 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.

Nor has the applicant provided any explanation of how he intends to meet future medical costs should they arise. No information has been provided as to whether the applicant has health insurance coverage. Such information, for instance, 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 applicant did not respond to the director's certified denial decisions. 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. Therefore, the decision of the director denying the waiver, and the decision denying the application for adjustment from temporary to permanent residence, will each be affirmed.

ORDER: The decisions are affirmed. The application for waiver is denied, and the application for adjustment from temporary to permanent residence is also denied.