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: VERMONT SERVICE CENTER Date:

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. The file has 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

DISCLOSURE
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The application for waiver of inadmissibility and the application for temporary resident status as a special agricultural worker were both denied by the Director, Eastern Regional Processing Facility. The decisions were certified for review. The matter is now before the Administrative Appeals Office (AAO). The decisions will be reversed.

In the decision, the director found the applicant to be inadmissible under section 212(a)(6) [subsequently renumbered as section 212(a)(1)(A)(i)] of the Immigration and Nationality Act (INA), due to a seropositive test for human immunodeficiency virus (HIV) antibodies. The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-690) because the applicant failed to submit sufficient documentation in support of the waiver. Because of her inadmissibility, the director denied the application for temporary resident status as a special agricultural worker.

Applicants for temporary resident status as a special agricultural worker must be admissible to the United States. 8 C.F.R. § 210.3(a). According to section 212(a)(1)(A)(i) of the INA, 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 Immigration and Naturalization Service, or Service (now Citizenship and Immigration Services, or CIS) instructions, an applicant who is inadmissible under section 212(a)(1)(A)(i), due to HIV infection, must demonstrate the following three conditions have been met if a waiver is to be granted and he or she 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, such inadmissibility may be waived 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).

The record reflects that the applicant filed her Application for Status for Temporary Resident Status as a Special Agricultural Worker (Form I-700) on November 30, 1988. The record shows that the applicant also submitted the required Form I-693 report of medical examination on which the examining civil surgeon certified a positive test for HIV antibodies. In addition, the applicant subsequently submitted a Form I-690 waiver application in an attempt to overcome the grounds of inadmissibility arising as a result of her medical condition.

Before denying the application, the director sent a notice to the applicant dated March 1, 1990, which advised her of her inadmissibility, acknowledged receipt of the Form I-690 waiver application, and the conditions that must be met in order to grant the waiver application. The notice further informed the applicant of the need to submit supporting documentation to demonstrate her compliance with these conditions. The record indicates that the applicant failed to respond to this notice.

The director determined that the applicant had failed to submit sufficient documentation to establish compliance with the three conditions needed to grant the waiver application. Therefore, the director concluded that the applicant had failed to overcome the grounds of inadmissibility and recommended denial of both the waiver application and application for temporary resident status in a Notice of Certification issued to the applicant on October 31, 1990.

While the director concluded that the applicant failed to submit any evidence establishing compliance with the first two criteria listed above, the record contains a letter dated April 11, 1989 and signed [redacted] Medical Director of the [redacted] and United States Civil Surgeon. In his letter, Dr. [redacted] stated that the applicant had been counseled regarding her medical condition, including routes of transmission, clinical implications prognosis, possible symptoms, and preventative measures to avoid

transmission. [redacted] declared that such counseling was conducted in both the French and English language to facilitate the applicant's ability to understand the implications of her medical condition. This letter tends to establish that the applicant is aware of the serious public health implications of her condition, has received counseling and education related to her HIV positive status, and is following accepted health care guidelines to prevent transmission of the virus. It is therefore concluded the danger to the public health and the possibility of the spread of the disease, as a result of the applicant's admission, are minimal.

At issue in this case is whether the applicant has established that there will be "no cost incurred by any government agency without its prior consent" due to granting the waiver of inadmissibility.

On May 26, 2004, the AAO issued a letter to the applicant advising her that the evidence contained in the record was not sufficient to show compliance with criteria number (3), as cited above. The applicant was informed the most persuasive type of documentation to demonstrate that the necessary and outstanding condition for the waiver has been met includes but is not limited to proof of enrollment in a medical treatment plan, proof of coverage by and current enrollment in a health insurance benefit plan, proof of current employment, records reflecting a stable employment history, and recent tax documents and returns.

In response, the applicant submitted a letter demonstrating her enrollment in a medical treatment plan, as well as recent tax documents and returns. The applicant also provided a letter from her father who indicated that he has and will continue to provide housing and any financial support his daughter may need. The applicant submitted a statement in which she requested her employment authorization be restored and declared that the lack of such authorization was the reason why she was not currently employed.

The record verifies the applicant's stable employment history prior to the Service's denial of employment authorization. The applicant has demonstrated that she is currently enrolled in medical treatment plan and that her father is willing to provide financial support including housing to his daughter. The evidence submitted by the applicant tends to establish 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 INA may be granted. Therefore, the decision recommending denial of the application for waiver of grounds of inadmissibility shall be reversed and the waiver application shall be approved. The application for temporary resident status as a special agricultural worker shall be returned to appropriate office to complete the adjudication of the application.

ORDER: The decisions to recommend that the application for waiver of grounds of inadmissibility and the application for temporary resident status as a special agricultural worker be denied are reversed. The waiver application is approved and the application for temporary resident status as a special agricultural worker will be forwarded to the appropriate office for adjudication.