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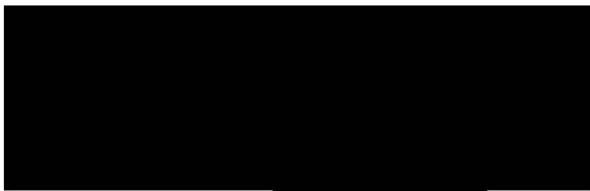
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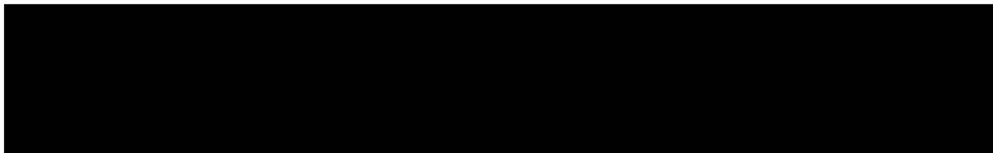
FILE: Office: PHOENIX DISTRICT OFFICE Date: FEB 04 2008

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:



**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. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Phoenix, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The applicant, a citizen of the Ivory Coast, was found 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 alien determined to have a communicable disease of public health significance. The applicant is the spouse of a United States citizen, and 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 husband.

The basis of the District Director's denial of the waiver application was the applicant's failure to submit evidence to document her eligibility for the waiver. On appeal, counsel explains that the applicant filed the waiver application without legal representation. Counsel submits an appellate brief and supporting documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

As noted previously, section 212(a)(1)(A)(i) of the Act provides that any alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance is inadmissible. Human Immunodeficiency Virus (HIV) has been determined by the Public Health Service to be a communicable disease of public health significance. 42 C.F.R. § 34.2(b)(4). However, aliens infected with HIV may, upon meeting certain conditions, have such inadmissibility waived.

Section 212(g)(1) of the Act provides, in pertinent part, that the Attorney General may waive such inadmissibility in the case of an individual alien who:

- (A) is a spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa, or
- (B) has a son or daughter who is a United States citizen or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human services, may by regulation prescribe.

An applicant who meets this statutory requirement must also demonstrate that the following three conditions will be met if a waiver is granted:<sup>1</sup>

- (1) The danger to the public health of the United States created by the applicant's admission is minimal; and
- (2) The possibility of the spread of the infection created by the applicant's admission is minimal; and

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<sup>1</sup> *Immigrant Waivers for Aliens Found Excludable Under Section 212(a)(1)(A)(i) of the Immigration and Nationality Act Due to HIV Infection*, Aleinikoff, Exec. Assoc. Comm., HQ 212.3-P (Sept. 6, 1995); *Citizenship and Immigration Services Adjudicator's Field Manual*, Chapter 41.3(a)(2)(E)(March 2006).

- (3) There will be no cost incurred by any government agency without prior consent of that agency.

The applicant and her United States citizen husband were married on June 4, 2004. The applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, on July 29, 2004. According to her physician, the applicant was diagnosed with HIV in July 2005. The applicant disclosed this information at her permanent residency interview. Accordingly, the District Director issued a Notice of Intent to Deny (NOID) the Form I-485 on November 29, 2005. In the NOID, the District Director informed the applicant that she was inadmissible to the United States, and requested that she file Form I-601, Application for Waiver of Ground of Excludability. The applicant filed the Form I-601 on February 2, 2006, which the District Director denied on February 14, 2006.

The applicant has satisfied section 212(g)(1) of the Act in that she is married to a citizen of the United States. Having determined the existence of a qualifying familial relationship, the AAO next turns to whether the applicant has established that the danger to the public health of the United States created by her admission would be minimal; whether the possibility of the spread of the infection created by her admission would be minimal; and that there would be no cost incurred by any government agency without prior consent of that agency.

Addressing the first condition, the requirement that the applicant demonstrate that the danger to the public health of the United States created by her admission would be minimal, counsel states in his April 13, 2006 appellate brief that the couple's approach to treatment, behavior, and education about HIV support the claim that she poses minimal danger to the health of the public; that the applicant is under the care of several physicians; that the applicant is aware of the severity of her condition and attends education classes for HIV patients; that the applicant is completely asymptomatic, with regular viral load and T-cell counts; and that, given the regular treatment and monitoring she is receiving, the likelihood of applicant developing AIDS is minimal.

Addressing the second condition, the requirement that the applicant demonstrate that the possibility of the spread of the infection created by her admission would be minimal, counsel states that the family is aware of the nature and severity of the applicant's condition and different ways HIV may be spread; that the family has taken appropriate precautions to avoid exposing anyone to HIV; that the family has arranged treatment in the case the applicant becomes symptomatic; and that, given the family's proactive approach to treatment, education, and precautionary behavior, the possibility of the applicant spreading HIV is minimal.

Addressing the third condition, the requirement that the applicant demonstrate that there would be no cost incurred by any government agency without prior consent of that agency, counsel states that the family has the requisite insurance, income, and assets to ensure that the applicant will not become a public charge in the event she becomes ill; that the applicant has health insurance; that the applicant and her husband have a combined annual income of approximately \$68,000; that they own a home with approximately \$100,000 in equity; that they have approximately \$12,000 in a savings account; that they have approximately \$2,000 in a checking account; that they have approximately \$15,000 in their 401(k) accounts; that they have approximately \$10,000 in vehicle value; that they have approximately \$5,000 in household goods; that the value of their assets will presumably rise over time; and that, given the family's assets and income, the government would not incur the cost of treatment if the applicant were to become ill. The record also contains information regarding the applicant's health insurance coverage through her husband's employment.

The record contains two infectious disease evaluations and one letter from the applicant's medical providers. In his March 6, 2006 letter, [REDACTED] states that the applicant is aware of her infection; that she is seeking appropriate care; and that she attends classes for HIV patients.

In his October 17, 2005 infectious disease evaluation, [REDACTED] states that the applicant has been "completely asymptomatic"; that she has never had an opportunistic infection; that she has never been sick in the hospital; that the applicant's husband has tested negative for HIV; and that the applicant was having a normal pregnancy.

In his November 28, 2005 infectious disease evaluation, [REDACTED] states that the applicant's pregnancy is proceeding normally and that she would be beginning antiretroviral medication shortly.

In her March 16, 2006 letter, the applicant states that she understands the gravity of her infection and is willing to attend seminars and classes in order to gain a better understanding of it; that since she was diagnosed with HIV she and her husband have been taking precautions so as not to spread the infection to him; that she and her husband do not have sexual partners outside the marriage; that, with the help of her doctors she has learned how to minimize the risk of infecting others; that, although she is currently taking medication, this is due only to the fact that she is pregnant, in order to protect the baby from infection at the time of delivery; that after her baby is born she should be able to discontinue her current medication; that she is not intending to spread her infection or become a charge of the state, as she and her husband both have jobs with insurance, home equity, cars, savings and checking accounts, and retirement plans.

In his March 16, 2006 letter, the applicant's husband states that he is aware of the nature and seriousness of the applicant's infection; that he is aware of the methods of transmission of the infection and the precautions that are necessary to avoid transmission; that he is aware of the applicant's medical treatment, which includes regular lab work and counseling sessions; that he and the applicant have arranged for medical treatment in the event the applicant becomes ill; and that he has sufficient health insurance and sufficient assets to pay for any necessary medical treatments.

The totality of evidence in this proceeding indicates that the applicant has satisfied all three criteria required for issuance of the waiver. In that she is in a monogamous relationship with her husband; is on medication to prevent her child from becoming infected at birth; attends HIV education classes and seminars; and is under the care of a team of physicians; the record establishes that the danger to the public health of the United States created by her admission would be minimal and the possibility of the spread of the infection created by her admission would be minimal. The evidence of record regarding the family's finances, including both their health insurance coverage and financial assets, establishes that there would be no cost incurred by any government agency, without prior consent of that agency, if the applicant were to become sick. The applicant has established that she qualifies for the waiver of inadmissibility, and the District Director's decision to the contrary will be withdrawn.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden.

**ORDER:** The appeal is sustained. The waiver application is approved.