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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: PORTLAND, OR Date: JAN 04 2008

IN RE: [redacted]

PETITION: 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 PETITIONER:

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. Any further inquiry must be made to that office.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Bahamas who was found to be inadmissible to the United 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 who is determined to have a communicable disease of public health significance, namely HIV infection. The applicant does not contest this finding. He thus seeks a waiver of the bar of admission provided under sections 212(g) in order to reside with his U.S. citizen spouse in the United States.

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.

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). Aliens infected with HIV, however, upon meeting certain conditions, may have such inadmissibility waived.

Section 212(g)(1) of the Act provides, in part, that the Attorney General [now the Secretary of Homeland Security (Secretary)] 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 (Secretary), in the discretion of the Attorney General (Secretary) after consultation with the Secretary of Health and Human services, may by regulation prescribe. [1]

Once it has been established that the requisite family relationship exists, as specified above, the applicant must then demonstrate that the following three discretionary criteria will be met if a waiver is granted:

> (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

[1] Though the applicant indicated on appeal that he and his wife recently had a child, no birth certificate was provided to verify this claim. Nevertheless, as the applicant's spouse is an U.S. citizen, and therefore a qualifying relative under section 212(g)(1) of the Act, the AAO is able to proceed with the discretionary criteria analysis.

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

The District Director denied the Application for Waiver of Grounds of Excludability (Form I-601) after determining that although the requisite family relationship existed, the applicant had failed to establish that no cost would be incurred by any government agency with respect to his medical condition. *Decision of the District Director,* dated December 7, 2005.

In support of the appeal, the applicant has submitted a letter, dated January 31, 2006, and a 114-page brochure entitled *Southwest Carpenters Health and Welfare Trust Summary Plan Description for Active Carpenters,* dated January 1, 2006. The entire record was reviewed and considered in rendering this decision

As the applicant states in his letter, "...I am HIV positive and living a full and healthy life. My wife and I have just recently had a baby girl...I am happy to report that my daughter and wife are healthy and free from my illness. I am good about seeing my doctor...and taking my medication on a daily basis...I am covered under insurance through the Carpenter's Union and they have been and will continue to cover all expenses except for my deductibles....My work visa expired in October. My insurance coverage is based upon hours worked. I have some hours banked but soon they will run out..." *Letter from* [redacted], dated January 31, 2006.

To begin, the record does not indicate that the district director analyzed the evidence provided and concluded that the danger to the public health and that the possibility of the spread of infection created by the applicant's admission to the United States is minimal. The district director's decision makes no references to these discretionary criteria in his decision. Moreover, the record itself contains no evidence that the applicant has complied with the above criteria. As such, the AAO finds that it has not been established that the danger to the public health created by the applicant's admission is minimal and that the possibility of the spread of infection created by the applicant's admission to the United States is minimal.

Moreover, with respect to third criteria, that no cost will be incurred by any government agency without prior consent, the AAO finds the evidence submitted with respect to the applicant's health care coverage to be vague and ambiguous. First, it has not been established that the brochure provided in support of the appeal specifically relates to the applicant's insurance coverage. The brochure merely outlines the plan options/details, and further provides information on how to enroll for such coverage. Moreover, no documents have been submitted that conclusively establish that the applicant is, in fact, covered for his HIV status. A more probative letter from the insurer would have been a letter that specifically identified the applicant and confirmed that he is covered under the medical plan, with a specific notation that the insurance carrier has no coverage limitations as to the nature or origin of disease or medical conditions, including HIV status. Without such a definitive statement, the evidence merely indicates that the applicant may have some medical coverage (which has not been fully documented, as referenced above), but the extent of that coverage in relation to his current medical condition and his current employment situation is unknown. Finally, based on the applicant's current employment situation, as referenced in his letter, it is not clear that the insurance coverage he may have had is still in existence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO also notes that previous submissions indicated

that the applicant was covered by his wife's work related insurance under CIGNA, not under Southwest Carpenter's Health and Welfare Trust, the carrier he now claims to be covered by.

Accordingly, it is concluded that the applicant has not met the above-referenced three criteria in regards to a section 212(g) waiver. As a result, the application for waiver of grounds of inadmissibility under section 212(a)(1)(A)((i) of the Act cannot be granted. The decision of the district director to deny the waiver application will be affirmed.

In proceedings for application for a waiver of grounds of inadmissibility under sections 212(g) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.