U.S. Department of Homeland Security
20 Mass. Ave, N.W. Rm. 3000
Washington, DC 20529-2090

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: MIAMI Date: JAN 16 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Colombia who was found to be 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 who is determined to have been infected with HIV, a communicable disease of public health significance. The applicant seeks a waiver of inadmissibility pursuant to section 212(g) of the Act, 8 U.S.C. § 1182(g).

The Acting District Director determined the applicant failed to establish that he has a qualifying relative through whom he can claim eligibility for a waiver. The applicant's Form I-601, Application for Waiver of Ground of Excludability (now referred to as Inadmissibility), was denied accordingly.

On appeal, the applicant does not contest the Acting District Director's determination. The applicant instead submits a letter detailing his desire to remain in the United States. The entire record was reviewed and considered in rendering this decision.

The applicant was found inadmissible under section 212(a)(1)(A)(i) of the Act as an alien who is determined to have been infected with HIV, a communicable disease of public health significance. 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, which shall include infection with the etiologic agent for acquired immune deficiency syndrome is inadmissible.[1] 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 may waive such inadmissibility in the case of an 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 [now, Secretary, Homeland Security, "Secretary"], in the discretion of the Attorney General [Secretary] after consultation with the Secretary of Health and Human services, may by regulation prescribe.

---

[1] 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).

A section 212(g) waiver is available only to applicants with a qualifying family member (i.e. a U.S. citizen or lawful permanent resident spouse, son, daughter, or parent). Here, the applicant listed no qualifying family members on his waiver application. The record reflects that the applicant is seeking adjustment of status based on an approved Form I-130, Petition for Alien Relative, filed on his behalf by his father, a naturalized U.S. citizen, who is now deceased. *See* Florida *Certificate of Death*, certified on July 9, 2002. The applicant's adjustment of status application shows that he is unmarried and does not have any children.

In *Matter of Federiso*, 24 I&N Dec. 661 (BIA 2008), the Board of Immigration Appeals (BIA) addressed the issue of the viability of a fraud waiver under section 237(a)(1)(H) of the Act, 8 U.S.C. § 1227(a)(1)(H), after the death of a qualifying family member. Section 237(a)(1)(H) of the Act similarly requires an alien to establish that he is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence. In *Matter of Federiso*, the BIA stated that it is clear from the language of section 237(a)(1)(H) of the Act and its interpretation by the courts and the BIA that the purpose of the waiver is to unite aliens with their living United States citizen or lawful permanent resident family members. 24 I&N Dec. 661, 664. The BIA held that because the respondent's mother is deceased, he does not have a qualifying relative in the United States, and is therefore not eligible for a waiver under section 237(a)(1)(H) of the Act. *Id.*

Similarly, in the present case, the applicant's father is deceased; therefore he is no longer a qualifying family member for purposes of a section 212(g) waiver of inadmissibility. Because the applicant no longer has a qualifying family member, he is not eligible for a waiver of inadmissibility under section 212(g) of the Act. On appeal, the applicant does not contest this determination.

In proceedings for application for waiver of grounds of inadmissibility under section 212(g) of the Act, the burden of proving eligibility rests 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.