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U.S. Department of Homeland Security  
20 Mass. Ave., NW, Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: NEWARK, NJ

Date: SEP 19 2008

IN RE:

[REDACTED]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for adjustment of status was denied by the Field Office Director, Newark, New Jersey who certified her decision to the Administrative Appeals Office (AAO) for review. The Field Office Director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. The CAA provides, in part:

[T]he status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, (now the Secretary of Homeland Security, (Secretary)), in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The Field Office Director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(1)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(1)(A)(i). The Field Office Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See Field Office Director's Notice of Certification*, dated May 7, 2008.

Section 212(a)(1)(A) of the Act states in pertinent part:

(1) *Health-related grounds.*—

(A) *In general.*—Any alien—

(i) 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.

(B) *Waiver authorized.*—For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

Section 212(g), 8 U.S.C. § 1182(g), reads, in pertinent part:

(g) The Attorney General [now Secretary of Homeland Security] may waive the application of—

(1) subsection (a)(1)(A)(i) in the case of any alien who—

- (A) is the 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,
- (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; or
- (C) qualifies for classification under clause (iii) or (iv) of section 204(a)(1)(A) or classification under clause (ii) or (iii) of section 204(a)(1)(B);

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.

The record reveals that the applicant has tested positive for HIV infection. *Form I-693, Medical Examination of Aliens Seeking Adjustment of Status.*

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Field Office Director's findings. In response, the applicant did not submit any evidence. The applicant did not contest the Field Office Director's finding that he does not have a qualifying relative that would allow him to apply for a waiver under section 212(g) of the Act.

The AAO concurs with the Field Office Director's finding that the applicant is inadmissible under section 212(a)(1)(A)(i) of the Act and is not eligible to apply for a waiver of this ground of inadmissibility under section 212(g) of the Act. Based on the Form I-485, Application to Register Permanent Residence or Adjust Status and the Form G-325A, Biographical Information, submitted by the applicant, he has no immediate family members in the United States. Further, he has submitted no evidence to currently establish that any immediate family member is currently the recipient of an immigrant visa. Accordingly, he does not have the qualifying relative required for a waiver under section 212(g) of the Act.

The decision of the Field Office Director to deny the application will be affirmed. An applicant must demonstrate by a preponderance of the evidence that he is eligible for the benefit sought. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, places the burden of proof upon the applicant to establish that eligibility. The applicant has not met his burden of proof in this particular case.

**ORDER:** The Field Office Director's decision is affirmed.