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



U.S. Citizenship
and Immigration
Services

H₁

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: NEWARK, NJ

Date: **AUG 22 2006**

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:

[REDACTED]

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 waiver application was denied by the District Director, Newark, NJ, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision is withdrawn and the matter remanded to the director for further action consistent with the present decision.

The applicant is a native and citizen of Mexico 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 a communicable disease of public health significance. The applicant is the beneficiary of an approved preference visa petition based on his marriage to a United States citizen. The applicant seeks a waiver of the bar of admission provided under sections 212(g) of the Act, 8 U.S.C. § 1182(g), in order to reside in the United States with his spouse.

The District Director denied the waiver application after determining the applicant is inadmissible under section 212(a)(4) of the Act because he failed to establish that he would not become a public charge at any time during his illness. *District Director's Decision*, dated April 21, 2004.

On appeal, counsel states that the applicant submitted sufficient documentation to show that he would not become a public charge. *Counsel's Statement*, dated May 17, 2004.

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. The record indicates that the applicant tested positive for HIV during the medical exam required for adjusting to lawful permanent resident status.

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 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:

(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

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

In support of his request for a section 212(g) waiver, the applicant submitted:

1. A letter from the applicant's healthcare provider, AtlantiCare Health Services which states the treatment the applicant is receiving, that he poses no danger to the public health and that the possibility of his spreading the infection is minimal.
2. A second letter from [REDACTED] a registered nurse at AtlantiCare Health Services which states that the applicant has been a patient since 1995 and has been compliant with his medical care. She states that the applicant's current condition is stable and his progress is excellent.
3. A copy of the deed to the applicant's condominium in Atlantic City, NJ, showing that on April 1, 2002 ownership was transferred to the applicant.
4. A letter dated April 1, 2004 from the applicant's employer stating that he is a full time permanent employee of 3 Mins Corporation and that he earns \$316.79 per week.
5. A letter dated April 1, 2004 from the applicant's wife's employer stating that she is also a full time permanent employee of 3 Mins Corporation and that she earns \$278.40 per week.
6. A letter dated April 5, 2004 from [REDACTED] the applicant's co-sponsor stating that he is still willing to support the applicant in his immigration application. and
7. Financial documentation from [REDACTED] showing that his retirement income is approximately \$75, 236 per year.

The AAO finds that in the present case, the director did not adjudicate the applicant's waiver application. When making a finding on a waiver application involving an applicant with HIV and a finding on public charge, both findings may be contained in the same decision, but should be written as separate and distinct adjudications to show that each ground of inadmissibility was reviewed and considered on its own merits. *Adjudicator's Field Manual*, Chapter 41.3(a)(2)(H). The director made a determination regarding the applicant becoming a public charge, but did not write a separate and distinct adjudication on its own merits concerning the applicant's inadmissibility under section 212(a)(1)(A)(i) and the waiver application he submitted to overcome this ground of inadmissibility.

Because the director's decision failed to separately adjudicate the applicant's inadmissibility under section 212(a)(1)(A)(i) of the Act and the applicant's waiver application under section 212(g) on its merits, the AAO finds it necessary to remand the present matter to the director for a new decision regarding the applicant's waiver application under section 212(g). If the new decision is adverse to the applicant, the decision shall be certified to the AAO for review.

ORDER: The director's decision is withdrawn and the matter remanded to the director for further action consistent with the present decision.