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U.S. Citizenship
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Services

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JUN 07 2007

IN RE:



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:



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 Acting District Director, Miami, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Cuba 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 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 his U.S. citizen child and other family members.

The acting district director denied the application because the applicant has no U.S. citizen or lawful permanent resident relatives who would qualify him for the waiver.

On appeal, the applicant asserts that he is entitled to have his inadmissibility waived based on humanitarian grounds under section 245(i) of the Act, 8 U.S.C. § 1245(i). The applicant contends that there is discrimination against people suffering from HIV in Cuba. He claims that treatment he is receiving in the United States is controlling the HIV, and that such treatment is not available in Cuba.

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). 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.

8 U.S.C. § 1182(g).

In this case, the applicant's medical examination shows he tested positive for HIV infection. The applicant submitted a Form I-601 waiver application, but he does not have any relatives in the United States that would

allow him to qualify for a waiver under section 212(g) of the Act, 8 U.S.C. § 1182(g). Therefore, the AAO finds that he is ineligible for the waiver.

The applicant requests that his inadmissibility be waived contending that the Attorney General (now the Secretary of the Homeland Security (the Secretary)) has "broad discretionary powers" under section 245(i) of the Act, 8 U.S.C. § 1245(i). *See* Form I-290B, Notice of Appeal. Section 245(i) allows for the adjustment of status for certain aliens who entered without inspection or are otherwise ineligible for adjustment under section 245(c) of the act, 8 U.S.C. § 1245(c)(relating to aliens who worked without authorization or who failed to maintain status). Section 245(i) of the Act does not give the Secretary "broad discretionary powers" to waive inadmissibility grounds. No provision of law gives the Secretary power to waive inadmissibility under section 212(a)(1)(A)(i) of the Act other than the waiver provided in section 212(g) of the Act.

In proceedings for application for a waiver of grounds of inadmissibility, 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.