



U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

Office: MIAMI, FLORIDA

Date: **APR 13 2009**

IN RE:

Applicant:

[REDACTED]

APPLICATION:

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 APPLICANT:

[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.

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

The AAO notes that on appeal, the applicant, through counsel, requested 30 days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed October 13, 2006. The record contains no evidence that a brief or additional evidence was filed within 30-days; therefore, the record is considered complete.

The applicant is a native and citizen of Nicaragua 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.

The District Director determined that the applicant failed to establish that he had a qualifying relative for a section 212(g) waiver and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 13, 2006.

On appeal, the applicant, through counsel, claims that the District Director erred in denying the applicant's waiver application. *Form I-290B, supra*.

The record includes, but is not limited to, copies of the results of the applicant's medical examinations, criminal court dispositions for the applicant's convictions, country reports on Nicaragua, and newspaper articles on the discrimination of homosexuals in Nicaragua. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 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 [Secretary], in the discretion of the [Secretary] 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 the present application, the record indicates that the applicant initially entered the United States on May 4, 1988 without inspection. On January 2, 1989, the applicant filed a Request for Asylum in the United States (Form I-589). On November 22, 1989, the applicant's asylum application was referred to an immigration judge and an Order to Show Cause (OSC) was issued against the applicant. On May 14, 1990, an immigration judge ordered the applicant deported from the United States. On May 1, 1990, a Warrant of Deportation (Form I-205) was issued. On March 20, 1996, the applicant was arrested for dealing in stolen property. On July 23, 1996, the applicant was convicted of dealing in stolen property and was sentenced to two (2) years probation. On March 10, 1999, the applicant was arrested for retail theft. On March 31, 1999, the applicant was convicted of grand theft in the third degree, and was ordered to pay court costs. On March 30, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On an unknown date, the applicant departed the United States. On April 28, 2001, the applicant was paroled into the United States. On an unknown date, the applicant departed the United States. On August 21, 2002, the applicant was paroled into the United States. On an unknown date, the applicant departed the United States. On January 19, 2003, the applicant was paroled into the United States. On December 8, 2003, the applicant filed another Form I-589. On January 13, 2005, an immigration judge terminated proceedings against the applicant. On the same day, a Notice to Appear (NTA) was issued against the applicant. On February 23, 2006, the applicant filed a Form I-601. On September 13, 2006, the District Director denied the applicant's Form I-601, finding the applicant failed to establish that he had a qualifying relative for a section 212(g) waiver.

A waiver under section 212(g)(1) of the Act is dependent first upon a showing that the applicant is the spouse or son of a United States citizen, or of a lawful permanent resident of the United States, or of an alien who has been issued an immigrant visa. The AAO notes that the record does not establish that the applicant is the spouse or son of a United States citizen, or of a lawful permanent resident of the United States, or of an alien who has been issued an immigrant visa; therefore, the applicant is ineligible for a waiver of inadmissibility under section 212(g) of the Act. Consequently, the appeal must be dismissed.

In proceedings for application for a waiver of grounds of inadmissibility under section 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.