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U.S. Citizenship  
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FILE:

[REDACTED]

Office: PHILADELPHIA, PA

Date: **MAR 10 2009**

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(g) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(g) and 1182(h)

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, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Haiti who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of at least one crime involving moral turpitude, and pursuant to section 212(a)(1)(A)(i) of the Act, 8 U.S.C. § 1182(a)(1)(A)(i), for having been determined to have a communicable disease of public health significance. The applicant has a U.S. citizen spouse and daughter, and he seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and had failed to submit a completed supplemental form for his section 212(g) waiver; and he denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, at 2, dated September 18, 2006.

On appeal, counsel asserts that the applicant has been issued waivers by the Department of State and the applicant's spouse would experience hardship based on her fear for the applicant's safety and life in Haiti. *Form I-290B*, dated October 18, 2006.

The record includes, but is not limited to, counsel's statement, the applicant's spouse's statement, the applicant's daughter's statement, the applicant's statement and information on the applicant's involvement in assisting law enforcement. The entire record was reviewed and considered in arriving at a decision on the appeal.

The applicant's medical examination indicates that he tested positive for the HIV infection. *Form I-693*, dated March 17, 2006. As such, the applicant is inadmissible under section 212(a)(1)(A)(i) of the Act for having been determined to have a communicable disease of public health significance.

Section 212(a)(1)(A) of the Act provides, in pertinent part, that 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. . . 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). Applicants 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. . .

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 this case, the applicant is married to a U.S. citizen. The record reflects that the applicant has now submitted the supplemental sheet required for waiver of applicants with HIV, which reflects that the applicant will submit to treatment and remain under prescribed medication; the applicant's health facility will provide treatment for the proper management of the applicant's condition; and satisfactory financial arrangements have been made for the treatment of the applicant's condition. *Applicant's HIV Supplemental Form*. Accordingly, it is concluded that the applicant is eligible for a section 212(g) waiver.

On June 18, 1986, the applicant pled guilty to 18 U.S.C. § 371 (conspiracy to commit offense or defraud the United States). The applicant was found guilty of conspiring to violate 8 U.S.C. § 1324(a)(1) and (a)(4) (bringing in and harboring aliens) and 18 U.S.C. § 1546(a) for obtaining a nonimmigrant visa knowing it to be procured by false claims, statements and fraud, all in violation of 18 U.S.C. § 371 (conspiracy to commit offense or defraud the United States).

The AAO finds that the applicant's violation of 18 U.S.C. § 1546(a) involves moral turpitude (i.e. obtaining a nonimmigrant visa knowing it to be procured by false claims, statements and fraud). As such, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act and the AAO will not address whether the applicant's other convictions involve moral turpitude.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
  - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

Section 212(h) of the Act provides, in pertinent part, that:

- (h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) and

of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if –

....

- (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

Counsel asserts that the applicant has been issued waivers by the Department of State. *Form I-290B*. However, the record does not document that the applicant has been previously issued a Form I-601 waiver under the extreme hardship standard of section 212(h) of the Act. The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. The qualifying relatives in this case are the applicant's spouse and daughter. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of lawful permanent resident or United States citizen family ties to this country, the qualifying relative's family ties outside the United States, the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries, the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she relocates to Haiti or resides in the United States, as there is no requirement that she reside outside the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Haiti. The applicant states that he was an informant with the Drug Enforcement Agency (DEA), his identity was revealed, and a drug gang in Haiti almost killed him on three separate occasions. *Applicant's Statement*, dated October 17, 2006. The record does not include evidence of the three different attacks. However, the record includes supporting evidence that the applicant would be in certain danger if he returned to Haiti. The applicant's spouse states that the applicant helped put away big time drug dealers, his life is in jeopardy and she would be unable to go to Haiti based on the unsafe environment. *Applicant's Spouse's Statement*, dated October 17, 2006. The applicant's daughter states that due to the events taking place in Haiti, she would not be able to visit or take care of her father. *Applicant's Daughter's Statement*, dated October 17, 2006. The applicant's daughter also states that the applicant's health may be affected by

going to Haiti, he has been attacked on three different occasions in Haiti and he would be in danger there. *Id.* The AAO also notes the January 28, 2009 U.S. Department of State Travel Warning for Haiti which details the risk of travel to Haiti. Based on the preceding evidence, the AAO finds that requiring the applicant's U.S. citizen spouse or daughter to relocate to Haiti with the applicant would constitute extreme hardship to them.

The second part of the analysis requires the applicant to establish extreme hardship in the event that the qualifying relative resides in the United States. The applicant's spouse states that her spouse's life is in jeopardy and it would be hard on her and her family if he was removed to Haiti. *Applicant's Spouse's Statement.* The applicant's daughter states that if the applicant left, his life would be in danger and this would result in extreme hardship to herself and her family. *Applicant's Daughter's Statement.* Based on a review of the record, the AAO finds that the record establishes that the applicant's spouse and daughter would experience extreme hardship if they remained in the United States without the applicant.

However, the AAO does not find that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The main adverse factors in the present case are the applicant's convictions, the serious nature and scope of his convictions, a prior deportation and failure to surrender for his deportation.

The favorable factors include the applicant's U.S. citizen spouse and daughter, assistance to law enforcement and extreme hardship to his spouse and daughter.

The AAO finds that taken together, the favorable factors in the present case do not outweigh the adverse factors, and a favorable exercise of discretion is not warranted. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.