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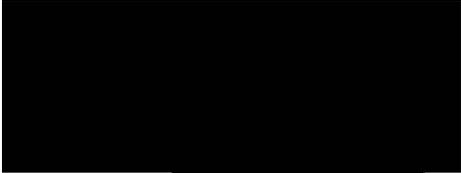
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

11



FILE:



Office: HOUSTON, TEXAS

Date:

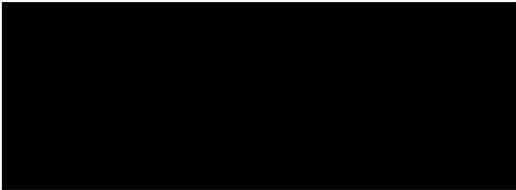
MAR 12 2009

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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink that reads "Michael Shumway".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Bahamas 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 married to a U.S. citizen and seeks a waiver of inadmissibility under section 212(g) of the Act, 8 U.S.C. § 1182(g) in order to reside with his family in the United States.

The district director found that when considering the direct and indirect costs for medical treatment over a lifetime for a patient living with HIV, the documentation submitted by the applicant is insufficient to meet the threshold of the waiver requirements and the applicant failed to show that he will not become a public charge to the United States. *District Director's Form I-601 Decision*, dated March 14, 2006.

On appeal, counsel states that the applicant has presented sufficient evidence to warrant the granting of a waiver and he submits additional documentation to establish that the applicant has met his burden in qualifying for a waiver. *Form I-290B*, dated April 12, 2006.

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 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 Secretary of Homeland Security 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 satisfies 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;
- (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 US citizen. His medical examination shows he tested positive for HIV infection, and that the results of the serological examination for HIV were confirmed by Western blot. *Form I-693*, dated January 22, 2004.

The record includes various documents in support of the applicant having medical insurance to cover his medical bills. In a statement by the applicant he states that he and his spouse's combined taxable income for 2002 was \$55,657 and that he has extensive medical coverage. *Applicant's Statement*, undated. He states that he has medical insurance that he pays for himself and medical insurance through his spouse and her employer. He states that through his insurance plan with Aetna he is required to pay only a co-payment of \$30.00 when he has a doctor's visit. He states that if he were to use the plan through his spouse's employer with Blue Cross Blue Shield he would have to pay a \$25.00 co-payment to see his doctor and \$30.00 to see a specialist. The applicant also states that a thirty-day supply of antiviral drugs may cost him as little as \$10.00 if he uses generic drugs or as much as \$50.00 if he chooses name brand drugs. *Id.*

The record includes a Certificate of Group Health Insurance Plan Coverage showing that the applicant is a named beneficiary on his spouse's HMO insurance plan with her employer, the University of Texas MD Anderson Cancer Center. The certificate is dated April 3, 2006 and shows that coverage began on April 9, 2001.

The record also includes a Verification of Eligibility form from Aetna Incorporated showing that the applicant's effective date with Aetna was July 1, 2005 and that an office co-payment would cost \$30.00. The verification is dated April 3, 2006.

The record includes a letter from the applicant's employer, [REDACTED], which states that the applicant is employed with [REDACTED] and is covered with long-term and short-term disability insurance through Prudential Insurance Company. *Letter from Applicant's Employer*, dated February 26, 2004. The letter states that the applicant's short term disability plan begins eight days after the employee is declared disabled and continues for ninety days. The letter states that during this time period the employee will receive sixty percent of his weekly salary or a maximum of \$500 per week. The letter also states that the applicant's long-term disability plan begins ninety-one days after the employee is

disabled and continues through age sixty-five years old. The letter states that the employee will receive sixty percent of his monthly salary or a maximum of \$5,000 per month. *Id.*

A previous letter submitted from the applicant's employer states that he has been employed with the [REDACTED] since July 3, 1997, that his current position is that of Outside Sales Manager, and that he earns \$2,307.70 per month. *Letter from Employer*, undated. In addition, pay stubs submitted for the applicant's spouse show that in 2003 she was earning approximately \$700 to \$900 per two-week pay period.

The AAO finds that the record includes sufficient evidence to show that the applicant is not likely to become a public charge and that there will be no cost incurred by any government agency on behalf of the applicant. However, the AAO finds that the current record does not satisfy the burden of proof in regards to the requirements that the applicant demonstrate that the danger to the public health of the United States created by the alien's admission is minimal and that the possibility of the spread of the infection created by the applicant's admission is minimal. The record does not include a letter from the applicant's doctor or treatment center establishing that he is undergoing any course of treatment for his condition and that he has been educated about the means that HIV can be transmitted to others.

Accordingly, it is concluded that the applicant has not met the three conditions listed previously in regard to the section 212(g) waiver. 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.