



U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX, AZ

Date: **MAR 30 2009**

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of the Ivory Coast 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 has a U.S. citizen child. She seeks a waiver of inadmissibility under section 212(g) of the Act, 8 U.S.C. § 1182(g) in order to reside with her family in the United States.

The district director found that the applicant failed to establish that the danger to the public health of the United States created by her admission is minimal, that the possibility of the spread of infection created by the applicant's admission is minimal and that there will be no cost incurred by any level of government agency in the United States without the prior consent of that agency. *District Director's Form I-601 Decision*, dated November 28, 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 U.S. citizen and has a U.S. citizen daughter. Her medical examination shows she tested positive for HIV infection, and that the results of the serological examination for HIV were confirmed by Western blot. *Form I-693*, dated July 13, 2005.

In regards to the applicant's treatment not incurring costs to any government agency, the applicant submits two pay stubs from 2007 showing that she earns approximately \$800 per two-week pay period. The applicant's 2005 U.S. Individual Income Tax Return shows that she earned 16,682 during that year. The record includes a letter from the credit union where the applicant is a member, which states that she has been a member of their credit union for two years and all of her accounts have been handled in a satisfactory manner and remain in good standing. *Letter from Financial Services Consultant*, dated January 18, 2007. The record also includes a copy of the applicant's health insurance card showing that she has benefits under an HMO plan with Aetna insurance company.

Concerning the danger to the public health of the United States and the possibility of spreading her infection the applicant submitted evidence of the treatment and education she is receiving for her illness. The record includes a contract signed by the applicant and case manager of the Care Direction Program of the Area Agency on Aging in Phoenix, Arizona outlining the responsibilities of the applicant as a recipient of services. A letter from the applicant's case manager at Care Directions, [REDACTED] states that she has been working with the applicant since January 2006 to assist with coordinating her care and services related to her HIV status. *Letter from [REDACTED]* dated January 22, 2007. [REDACTED] states that the applicant has maintained regular contact with the agency, scheduled home visits, and maintained her medical care. She states that the applicant is aware of her illness and the impact it has on her day to day life. She also states that she has discussed prevention techniques with the applicant and that the applicant is aware of how HIV is transmitted and takes the necessary precautions to safeguard herself and others. Finally, [REDACTED] states that the applicant is knowledgeable of community services and agencies that provide support and services to people with HIV and she is able to access services as needed. *Id.* The record also includes a letter from the primary care provider for the applicant, [REDACTED] MSN, NP. [REDACTED] states that she manages the applicant's HIV infection and that the applicant is an extremely compliant patient who remains well controlled on her current anti-retrovirals. *Letter from [REDACTED]* dated January 22, 2007. She lists the medications currently being taken by the applicant and states that she receives routine blood work every three months to monitor her condition. *Id.*

Accordingly, it is concluded that the applicant has now met the three conditions listed previously in regards to a section 212(g) waiver. In proceedings for an 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 now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.