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



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

HI

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date:

NOV 17 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the field office director will be withdrawn and the application declared moot.

The applicant is a native and citizen of France 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, namely HIV infection. The applicant does not contest this finding. He thus seeks a waiver of the bar of admission provided under section 212(g) in order to reside in the United States.

The field office director denied the Application for Waiver of Grounds of Excludability (Form I-601) after determining that the requisite family relationship required pursuant to section 212(g) did not exist. *Decision of the Field Office Director*, dated August 12, 2009.

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. Upon meeting certain conditions, inadmissibility under section 212(a)(1)(A)(i) may be waived.

Effective January 4, 2010, HIV is no longer defined as a communicable disease of public health significance and as such, an individual infected with HIV is no longer inadmissible to the United States under section 212(a)(1)(A)(i) of the Act. *See Public Law 110-293, 42 CFR 34.2(b), and Inadmissibility Due to Human Immunodeficiency Virus (HIV) Infection, Revision to Adjudicator's Field Manual (AFM) Chapters 24.2, 40.1, 41.3, and Appendix 41-1, 41-2, and 41-3 (AD 10-03)*, dated November 24, 2009.

Accordingly, as the ground of inadmissibility set forth in the field office director's decision¹ is no longer applicable in the instant case, the AAO concludes that the applicant is not inadmissible under

¹ The AAO notes that the applicant was convicted of Disorderly Conduct under section 647(a) of the California Penal Code in 1997; no prison sentence was imposed.

Section 647 of the California Penal Code states, in pertinent part:

Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

Section 19 of the California Penal Code states, in pertinent part:

Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both.

the Act. The applicant's appeal will be dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility will be declared moot.

ORDER: The appeal is dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared moot.

Section 212(a)(2) of the Act provides, in pertinent part:

(A)(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

(i) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

....

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The AAO finds that irrespective of whether disorderly conduct is a crime involving moral turpitude, said conviction meets the requirements set forth for a petty offense exception under section 212(a)(2)(A)(ii) of the Act. As such, it is not necessary in the instant case for the AAO to analyze in detail whether disorderly conduct is a crime involving moral turpitude. The applicant is not inadmissible under section 212(a)(2)(A)(i) of the Act.