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U.S. Citizenship
and Immigration
Services

H2

[REDACTED]

FILE:

[REDACTED]

Office: ST. PAUL, MN

Date:

JAN 31 2007

IN RE:

[REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

PUBLIC COPY

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Liberia 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 was also found to be inadmissible under section 212(a)(2)(D)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(D)(ii), for attempting to procure a prostitute. The applicant seeks a waiver of the two grounds of inadmissibility provided in sections 212(g) and (h) of the Act, 8 U.S.C. § 1182(g) and 8 U.S.C. § 1182(h) in order to reside in the United States.

The district director denied the application after determining the applicant failed to establish that he meets the criteria to be eligible for a waiver of inadmissibility. *Decision of the District Director*, dated March 21, 2006.

On appeal, counsel states that the district director erred in finding that the applicant did not meet the criteria to be eligible for a waiver of inadmissibility. *Form I-290B*, dated April 20, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statement, the applicant's medical records, the applicant's proof of insurance coverage and the applicant's criminal records.

The applicant's medical examination indicates that he tested positive for the HIV infection. *Form I-693*, dated February 24, 2006. The record reflects that the applicant plead guilty to solicitation to engage in prostitution on December 12, 2000. *Case History*, dated March 23, 2006. Therefore, he is inadmissible under sections 212(a)(1)(A)(i) and 212(a)(2)(D)(ii) of the Act

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, 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 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, he tested positive for the HIV infection, and the results of the serological examination for HIV were confirmed by Western blot. The applicant's physician states that the applicant has been receiving medical care at his clinic since September 1999, he has a current medication regimen, he is in good health and his health status should remain the same. *Letter from Dr. [REDACTED]* dated February 23, 2006. Counsel states that because the applicant understands what he needs to do to remain healthy, he does not pose a danger to the public. *Brief in Support of Waiver Application*, at 6, dated January 28, 2006.

The applicant states that he has come to understand the complexity of the illness and how to live a productive life, that he has engaged in research and workshops to become more knowledgeable about the disease, that he understands the way HIV is transmitted, that he has never taken illegal drugs and does not intend to do so, that he does not practice unsafe sex, and that he will continue to work with his doctor and other support groups to keep his knowledge current. *Applicant's Statement*, dated February 27, 2006. The applicant's doctor states that the applicant is receiving ongoing counseling and educational information regarding HIV/AIDS, and that he understands the severity of his illness and what he needs to do to stay healthy. *First Letter from Dr. [REDACTED]* dated February 21, 2006. The AAO noted that the applicant plead guilty to soliciting a prostitute in 2000. The applicant's spouse states that the incident in question was an isolated incident that happened at a point of extreme vulnerability in his life. *Applicant's Spouse's Statement*, at 1-2, undated. This incident occurred while the applicant knew he was HIV positive, however, it was a one-time incident that occurred over six years ago and there is no indication that he intended to have unprotected intercourse. A review of the record reflects that the applicant has met the first two conditions of the analysis.

Counsel states that the applicant has private health insurance which covers his medical checkups, urgent care and prescription drugs. *Brief in Support of Waiver Application*, at 7. The applicant's doctor states that the applicant has been receiving treatment at the HealthPartners Specialty Center Infectious Disease Clinic for HIV since September 1999. *Letter from Dr. [REDACTED]* The record includes a copy of the applicant's insurance card for HealthPartners. The record does not reflect that costs will be incurred by a government agency, therefore,

the third prong of the analysis is met. Accordingly, it is concluded that the applicant has met the three conditions listed previously and is eligible for a section 212(g) waiver.

Section 212(a)(2)(D) of the Act states, in pertinent part, that any alien who:

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10- year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution, is inadmissible.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

(i) **the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) . . . or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,**

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 . . .

As the applicant has been found to be eligible for a section 212(g) waiver of the section 212(a)(1)(A)(i) ground of inadmissibility, he is only inadmissible under section 212(a)(2)(D)(ii) of the Act. As such, the applicant is required to establish eligibility for a waiver under the standard of section 212(h)(1)(A) of the Act due to his being inadmissible only under section 212(a)(2)(D)(ii) of the Act.¹

In order to be eligible for a section 212(h)(1)(A) waiver, the applicant must demonstrate that his admission to the United States would not be contrary to its national welfare, safety, or security and that he is rehabilitated. Counsel states that the applicant and his spouse are employed with a gross salary of \$90,000. *Brief in Support of Waiver Application*, at 3. The record includes substantiating evidence of their employment. Based on their employment, it does not appear that the applicant will be a financial burden on the United States and there is no indication that the applicant has ever relied on the government for financial assistance. The record reflects that the applicant has not been charged with any additional crimes since his conviction in 2000. There is no indication that the applicant is involved with terrorist-related activities. Therefore, the record evidences that admitting the applicant to the United States would not be contrary to its national welfare, safety, or security and the applicant is rehabilitated.

The granting of the waiver is discretionary in nature. There are several favorable discretionary factors for the applicant. The applicant is married to a U.S. citizen spouse and he has two U.S. citizen children. The record reflects that he is gainfully employed and pays his taxes.

The unfavorable factor is the applicant's conviction on December 12, 2000.

Based on a thorough review of the record, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factor. Therefore, the applicant is eligible for a waiver under section 212(h)(1)(A) of the Act.

In proceedings for application for a waiver of grounds of inadmissibility under sections 212(g) and (i) 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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.

¹ The district director appears to have adjudicated this case using the standard of extreme hardship as mentioned in section 212(h)(1)(B) of the Act.