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U.S. Department of Homeland Security
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: DENVER, CO Date: JAN 07 2009

IN RE: [redacted]

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

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.

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, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Ethiopia and citizen of Belgium 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 her family in the United States.

The district director noted that the applicant was inadmissible to the United States as an alien who has tested positive for Human Immunodeficiency Virus (HIV) infection and found that she had failed to demonstrate that she had met the conditions required for the granting of a waiver of inadmissibility under section 212(g) of the Act. *District Director's Form I-485 Decision*, dated June 7, 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. HIV has been determined by the Public Health Service to be a communicable disease of public health significance. *See* 42 C.F.R. § 34.2(b)(4). Aliens infected with HIV, however, upon meeting certain conditions, may have such inadmissibility waived under section 212(g) of the Act.

Section 212(g)(1) of the Act provides, in part, that the Attorney General, now Secretary of Homeland Security, may waive HIV inadmissibility in the case of an 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; 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's 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 March 22, 2005. The applicant is married to a U.S. citizen. In support of the Form I-601, the applicant has submitted a statement; an affidavit; and documentation from the hospital where she is receiving treatment and a letter from her physician.

General requirements for filing immigration applications and petitions are set forth at 8 C.F.R. §103.2(a)(1) as follows:

> [E]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations requiring its submission . . . .

Instructions accompanying the Form I-601 inform applicants with HIV infection they must complete the page entitled, "To Be Completed for Applicants With Human Immunodeficiency Virus (HIV) Infection," of the waiver application and note that, if the page is not completed, "the application will be returned . . . without further action." *See Instructions for I-601, Application for Waiver of Grounds of Inadmissibility*, page 3.

In the present case, the AAO notes that the district director issued a request for evidence on January 17, 2006, in which he stated he was including a copy of the Form I-601. He specifically informed the applicant that she was required to complete the "supplemental regarding HIV." However, the Form I-601 submitted by the applicant does not include the page that must be completed by HIV positive applicants. Accordingly, the applicant has not complied with the regulatory requirements for filing the Form I-601 and the appeal will be dismissed.

ORDER: The appeal is dismissed.