



U.S. Citizenship
and Immigration
Services

H2



FILE:



Office: SAN JUAN

Date:

SEP 28 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, San Juan, Puerto Rico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the acting field office director for continued processing.

The applicant is a native and citizen of the Dominican Republic 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 with his lawful permanent resident spouse and U.S. citizen children.

The Acting Field Office Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) after determining that although the requisite family relationship existed, the applicant had failed to establish that no cost would be incurred by any government agency with respect to his medical condition. *Decision of the Acting Field Office Director*, dated September 10, 2007

In support of the appeal, the applicant submitted the Form I-290B, Notice of Appeal (Form I-290B), and an attachment, dated September 18, 2007, and documentation with respect to the applicant's insurance.¹

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. 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 Attorney General [now the Secretary of Homeland Security (Secretary)] 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

¹ 8 C.F.R. § 103.2(b)(3) states:

(3) Translations. Any document containing foreign language submitted to the Service [now the U.S. Citizenship and Immigration Services (USCIS)] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The AAO notes that numerous documents submitted with the appeal are written in a foreign language. Any documents submitted by the applicant that are not in English and/or are not translated into English are not probative and will not be accorded any weight in this proceeding, as the AAO cannot determine whether said documentation supports the applicant's claims for a waiver.

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 (Secretary), in the discretion of the Attorney General (Secretary) after consultation with the Secretary of Health and Human services, may by regulation prescribe.

Once it has been established that the requisite family relationship exists, as specified above, the applicant must then demonstrate that the following three discretionary criteria 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.

Immigrant Waivers for Aliens Found Excludable Under Section 212(a)(1)(A)(i) of the Immigration and Nationality Act Due to HIV Infection, Aleinikoff, Exec. Assoc. Comm., HQ 212.3-P (Sept. 6, 1995); *Citizenship and Immigration Services Adjudicator's Field Manual*, Chapter 41.3(a)(2)(E)(March 2006).

As the applicant states in support of the appeal, "I'm infected with HIV virus.... At this moment the danger to the public health of the United States created by me is minimal. In fact I have not infected anybody and because since I was notify about my condition, I keep on abstinence at all.... I also finance my treatment and without cost incurred by any level of government agency of the United States, I have private insurance medical plan...being treated by a private doctor.... I am not public charge for the government.... My level of danger to the public health is minimal...." *Statement from* [REDACTED] dated September 18, 2007.

On May 15, 2009, the AAO issued a Request for Evidence (RFE) to the applicant, noting as follows:

[T]he question before the AAO at this time, based on a thorough review of the documentation submitted by the applicant with the initial Form I-601 and on appeal, is whether it has been established that the danger to the public health and the possibility of the spread of infection created by the applicant's admission to the United States is minimal. The AAO thus asks that the applicant submit proof of continuing health coverage and treatment. Such evidence may include, but is not limited to, a letter from

the applicant's insurer confirming the applicant's continued health coverage for HIV infection and a letter from the applicant's treating physician, confirming treatment and establishing the following: that the applicant understands his condition, that the danger to the public health is minimal and that the possibility of the spread of infection is minimal, should the applicant be admitted to the United States.

See RFE, dated May 15, 2009.

In response to the RFE, to establish that the danger to the public health of the United States created by the applicant's admission is minimal and the possibility of the spread of the infection created by the applicant's admission is minimal, the applicant submits a statement, asserting that "I always had been under medical care since my condition was diagnosed, and my type of life is very special, because I'm under the god's rules, because my life lapses from my job to my family and from my house to the church.... According to my doctor, the possibility of the spread of infection is minimal...." *Letter from* [REDACTED] dated August 3, 2009.

In addition, a letter has been provided from the applicant's parish priest, confirming that the applicant "is part of our parochial community, and he attended with his family to our religious activities and parochial...." *Letter and Translation from* [REDACTED] dated June 15, 2009. Finally, as requested by the AAO, the applicant's treating physician confirms that the applicant "is my patient, HIV+ and now on Kaletra and Truvada [HIV medications]. His condition is completely stable. Presents no public health threat nor his condition is transmissible other than sex. He is married and wife and children negative...." *Letter from* [REDACTED], *Internal Medicine*, dated July 21, 2009.

Based on the documentation provided, it has been established that the danger to the public health of the United States created by the applicant's admission is minimal and the possibility of the spread of the infection created by the applicant's admission is minimal.

Regarding the third criteria, that no cost will be incurred by any government agency, the applicant's treating physician confirms that the applicant has private health insurance that pays for his treatment. *Id.* at 1. Copies of the applicant's insurance and prescription cards have been provided. The AAO thus finds that the applicant has established that there will be no cost incurred by any government agency without prior consent of that agency.

Accordingly, it is concluded that the applicant has met the above-referenced criteria in regards to a section 212(g) waiver. As a result, the appeal will be sustained and the application for waiver of grounds of inadmissibility under section 212(a)(1)(A)(i) of the Act is granted.

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. Here, the applicant has met that burden. Accordingly, the appeal will be sustained and the application is approved.

ORDER: The appeal is sustained. The waiver application is approved. The acting field office director shall reopen the denial of the Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) on motion and continue to process the adjustment application.