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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

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[Redacted]

FILE: [Redacted] Office: LOS ANGELES Date: **APR 15 2009**

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Inadmissibility pursuant to Section 245A(d)(2)(B)(i) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a(d)(2)(B)(i)

ON BEHALF OF APPLICANT:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant filed an application to adjust status from temporary to permanent resident under section 245A of the Act. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(1)(A)(i) of the Act, 8 U.S.C. § 1182(a)(1)(A)(i), as an alien who is determined to have been infected with HIV, a communicable disease of public health significance. The applicant seeks a waiver of inadmissibility pursuant to section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i).

The director determined that the applicant failed to provide any humanitarian, public interest or family unity reasons for the approval of his waiver, and he failed to establish satisfactory financial arrangements for his care and treatment. The applicant's Form I-690, Application for Waiver of Grounds of Inadmissibility Under Section 245A of the Act, was denied accordingly.

On appeal, counsel asserts that there are public interest reasons for the approval of the applicant's waiver application. Counsel states that the applicant has been a hard working and contributing member of the community for over 25 years. Counsel states that the applicant has been a community asset and has never had criminal problems. Counsel notes that the applicant's brother is a United States citizen and his sister is a lawful permanent resident. The entire record was reviewed and considered in rendering the decision on this appeal.

Section 212(a)(1)(A)(i), 8 U.S.C. § 1182(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, which shall include infection with the etiologic agent for acquired immune deficiency syndrome is inadmissible.¹ Aliens infected with HIV, however, upon meeting certain conditions, may have such inadmissibility waived.

Pursuant to 8 C.F.R. 245a.3(d)(4), an applicant who is inadmissible under section 212(a)(1)(A)(i) of the Act, 8 U.S.C. § 1182(a)(1)(A)(i), due to HIV infection, must demonstrate the following three conditions will be met if a waiver is granted and he is granted adjustment of status from temporary to permanent residence:

(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

¹ 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).

(3) there will be no cost incurred by any government agency without prior consent of that agency.

If the applicant meets these criteria, the Attorney General [now Secretary, Department of Homeland Security], may waive such inadmissibility in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i).

Examples of evidence considered sufficient to meet the first two requirements include, but are not limited to:

- (a) evidence that the applicant has arranged for medical treatment in the United States;
- (b) the applicant's awareness of the nature and severity of his or her medical condition;
- (c) evidence of counseling;
- (d) the applicant's willingness to attend educational seminars and counseling sessions; and
- (e) the applicant's knowledge of the modes of transmission of the disease.

As for the third requirement, applicants may submit evidence of private insurance, personal financial resources, proof that a hospital, research organization or other type of facility will provide care at no cost to the government, or any other evidence establishing the ability to cover the cost of medical treatment for HIV/AIDS.²

The record reflects that the applicant furnished a letter from [REDACTED] of the Orange County Health Care Agency, as evidence of his medical treatment and counseling.³ The letter in pertinent part provides the following:

has been a patient of Orange County Health Care Agency HIV Ambulatory Care Clinic since December 27, 1999. At the present time, his HIV is stable and under control. His CD4 count is 540 and his viral load level is undetectable at fewer

² *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); U.S. Citizenship and Immigration Services Adjudicator's Field Manual, *Waiver of Medical Grounds of Inadmissibility*, Chapter 41.3 (updated October 2008).

³ The letter is dated May 10, 2005.

than 50 copies of the virus. He is taking the following medications: and

has received extensive education and counseling regarding his HIV status. He has learned about the HIV spectrum of the disease, about HIV transmission, about how the virus is spread and the precautions he must take in order to prevent the spread of HIV.

letter establishes that the applicant has received counseling and treatment, in accordance with the first two requirements. Accordingly, the danger to public health and the possibility of the spread of infection created by the applicant's admission to the United States is minimal.

Regarding the third requirement, the applicant furnished a copy of his Atena health insurance card and prescription card issued through his employer, . The record reflects that the applicant has maintained long-term employment with a division of the . A letter from , Corporate Operations Manager of provides that the applicant has been employed as a hairstylist since March 16, 2000.⁵ The applicant furnished earnings statements, dated October 26, 2007 through December 21, 2007, from . The earnings statement dated December 21, 2007 reflects the applicant's year to date gross pay as \$31,113.51. The applicant had previously furnished his 2003 and 2004 W-2 Forms (Wage and Tax Statements), showing an annual gross salary of \$22847.37 and \$28,897.52, respectively.

The foregoing evidence of the applicant's private health insurance, treatment at the Orange County Health Care Agency HIV Ambulatory Care Clinic, and full-time employment with , demonstrate that if the applicant is admitted to the United States there will be no cost incurred by any government agency without prior consent of that agency.

Applicants found inadmissible under section 212(a)(1)(A)(i) of the Act, 8 U.S.C. § 1182(a)(1)(A)(i), as having HIV, a communicable disease of public health significance, also are potentially inadmissible under section 212(a)(4)(A) of the Act, 8 U.S.C. § 1182(a)(4)(A).⁶ Section 212(a)(4)(A) of the Act renders inadmissible any alien who, in the opinion of the Attorney General [Secretary] at the time of application for admission or adjustment of status, is likely at any time to become a public charge. Section 212(a)(4)(B)(i) of the Act specifically lists the factors to be taken into account when making a public charge determination. These factors include the alien's age, health, family status, assets, resources, and financial status, and his or her education and skills.

⁴ <http://www.carltonhairinternational.com/contact.aspx>

⁵ The letter is dated December 10, 2007

⁶ U.S. Citizenship and Immigration Services Adjudicator's Field Manual, *Waiver of Medical Grounds of Inadmissibility*, Chapter 41.3; See *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).

The U.S. Department of Health and Human Service's 2007 federal poverty guidelines reflect that an annual income of less than \$10,210 for a family of one constitutes poverty, thus allowing for financial eligibility for certain federal program purposes.⁷ The applicant had a gross income in 2007 that was far above this income amount. As stated previously, the applicant's earnings statements from 2007 show that he earned a gross salary of at least \$31,113.51. Further, the record reflects that the applicant has maintained long-term employment with Carlton Hair as a hairstylist since March 16, 2000. Therefore, the applicant has demonstrated that he is not likely to become a public charge if he is admitted to the United States.⁸

The AAO notes that before USCIS makes a final determination on the waiver application, the Centers for Disease Control and Prevention (CDC) must first issue an endorsement of review.⁹ In order to obtain endorsement from the CDC, the applicant must furnish a completed *CDC Form for Applicants with HIV Infection* (Form I-690 Supplement for Applicants with Human Immunodeficiency Virus (HIV) Infection).¹⁰ The record reflects that the applicant completed this form, with the requisite signature from [REDACTED], a local health department official. The file contains a letter from [REDACTED], Acting Chief, Immigrant, Refugee and Migrant Health Branch, Division of Global Migration and Quarantine (E03), National Center for Infectious Diseases, Centers for Disease Control and Prevention, indicating her receipt of the completed form.

Therefore, the AAO finds that the applicant has satisfied the three conditions delineated in 8 C.F.R. 245a.3(d)(4). The applicant has established that the danger to the public health of the United States created by the alien's admission is minimal; the possibility of the spread of the infection created by the applicant's admission is minimal; and there will be no cost incurred by any government agency without prior consent of that agency. The applicant must now establish that his waiver should be approved for humanitarian purposes, to assure family unity, or public interest reasons. Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i).

The term "humanitarian" is not defined in the Act or the regulations. The AAO notes that the Act provides for a number of humanitarian motivated mechanisms to assist individuals in need of shelter or aid from various disasters and oppression, such as asylum/refugee processing,

⁷ <http://aspe.hhs.gov/POVERTY/07poverty.shtml>

⁸ The AAO notes that aliens for adjustment of status under section 245A of the Act who are determined to be likely to become a public charge may still be admissible under the terms of the Special Rule. 8 C.F.R. § 245a.3(g)(4). Under the Special Rule, an alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level is not inadmissible as a public charge. 8 C.F.R. § 245a.3(g)(4)(iii). The alien's employment history should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. *Id.*

⁹ U.S. Citizenship and Immigration Services Adjudicator's Field Manual, *Waiver of Medical Grounds of Inadmissibility*, Chapter 41.3.

¹⁰ *Id.*

temporary protected status and humanitarian parole.¹¹ Webster's New College Dictionary defines humanitarian as the promotion of human welfare and the advancement of social reform.¹² The AAO notes further that Congress contemplated that waivers under section 245A of the Act be granted liberally. *See Matter of P-*, 19 I&N Dec. 823, 828 (Comm. 1988). According to the aforementioned letter from [REDACTED], HIV treatment is not easily available in Mexico. The letter, in pertinent part, provides the following:

It is important that people with HIV maintain a good stress free psychological state and have family and friends to rely on for support. The United States is farther advanced in research on the prevention and treatment of HIV and AIDS than other countries in the world. The availability of drugs is crucial to prolonging the life of most HIV and AIDS patients. Since these drugs are not easily available in Mexico, and if available, they are extremely expensive and thus unobtainable by most people, it would be in [REDACTED]'s best medical interest to remain in the United States.

The letter further states that the applicant is receiving medical treatment from the Orange County Health Care Agency HIV Ambulatory Care Clinic. The AAO finds that the applicant's medical condition, and the lack of available treatment in Mexico, is a humanitarian consideration that merits the approval of the waiver. The AAO notes that the applicant has a number of favorable factors that merit the approval of the waiver. The record contains the applicant's social security statement, which shows that the applicant has maintained continuous employment in the United States since 1988 and paid his income taxes. The record reflects that the applicant has resided in the United States for 29 years, has not been convicted of any crimes, and has demonstrated that he will not become a public charge.

Based upon the foregoing, the AAO finds that the applicant has met his burden of proof in these proceedings. The applicant has satisfied the requirements for a waiver of inadmissibility under 8 C.F.R. 245a.3(d)(4) and section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i).¹³ Accordingly, the previous decision of the director will be withdrawn and the waiver application will be approved. The AAO suggests that the director *sua sponte* reopen the applicant's application for adjustment to permanent resident status in accordance with this decision.

ORDER: The appeal is sustained.

¹¹ See www.uscis.gov

¹² Webster's New College Dictionary (3d ed., Houghton Mifflin Harcourt 2008).

¹³ A Federal Bureau of Investigation (FBI) report based upon the applicant's fingerprints reveals that he was deported on December 4, 1981. There is no indication in the record of proceedings that the applicant departed the United States under this order of deportation. The applicant's Form I-687, Application for Status as a Temporary Resident, shows that he has continuously resided in the United States since December 1, 1979. Therefore, the AAO will not make an additional finding of inadmissibility based upon the applicant's deportation order. The AAO notes that if the applicant were found to be inadmissible under any subsection of 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), he would be eligible for a waiver of inadmissibility under section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), pursuant to the aforementioned humanitarian grounds.