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U.S. Citizenship
and Immigration
Services

L2

FILE:

[REDACTED]
SRC 07 105 53019

Office: TEXAS SERVICE CENTER

Date:

JUL 09 2007

IN RE:

Applicant: [REDACTED]

PETITION: Application for Adjustment of Status under Section 209(b) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1159(b)

ON BEHALF OF APPLICANT:

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 Director, Texas Service Center denied the application and certified her decision to the Administrative Appeals Office (AAO). The director's decision will be withdrawn. The application will be approved.

The applicant is a native of China who was granted asylum in the United States on April 27, 2004. On February 16, 2007, she submitted an application to adjust status to that of lawful permanent resident pursuant to section 209(b) of the Immigration and Nationality Act (the Act), as amended, 8 U.S.C. § 1159(b). The applicant's Form I-485 was accompanied by the Form I-693, Medical Examination of Aliens Seeking Adjustment of Status.

The director denied the application to adjust status, finding that the applicant had failed to comply with all of the medical examination requirements of the Form I-693, specifically the required tuberculin skin test. *Decision of the Director*, June 1, 2007.

Pursuant to section 209(b)(5) of the Act, an asylee must, with limited exceptions,¹ be admissible to the United States as an immigrant at the time he or she seeks lawful permanent residence. Accordingly, an asylee who seeks adjustment of status is required to establish his or her admissibility under the health grounds of section 212(a)(1)(A) of the Act, which preclude the admission of individuals who suffer from certain communicable diseases, have failed to document their vaccination against vaccine-preventable diseases, or have physical or mental disorders with associated harmful behavior. Of specific interest to this proceeding is the language of section 212(a)(1)(A)(i) of the Act that renders inadmissible, 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

Diseases determined to be diseases of public health significance by the Secretary of Health and Human Services include: chancroid, gonorrhea, granuloma inguinale, HIV infection, infectious leprosy, lymphogranuloma venereum, infectious stage syphilis and active tuberculosis. *See* 42 C.F.R. § 34.2(b).

To establish their admissibility under section 212(a)(1)(A) of the Act, the regulation at 8 C.F.R. § 209.2(d) requires asylees to submit the Form I-693:

Medical examination. An alien seeking adjustment of status under section 209(b) of the Act 1 year following the grant of asylum under section 208 of the Act shall submit the results of a medical examination to determine whether any grounds of inadmissibility described under section 212(a)(1)(A) of the Act apply. Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, and a vaccination supplement to determine compliance with the vaccination requirements described under section 212(a)(1)(A)(ii) of the Act must be

¹ Only the provisions of section 212(a)(4), (5) and (7)(A) of the Act are not applied to an asylee seeking adjustment of status. Section 209(c) of the Act.

completed by a [designated] civil surgeon in the United States and submitted at the time of application for adjustment of status.

In the present case, the applicant submitted a Form I-693 in conjunction with the application for adjustment of status that indicates no tuberculin skin test was performed by the civil surgeon who conducted her medical examination [REDACTED]. Instead, [REDACTED] submitted a radiology report as evidence that the applicant does not have active tuberculosis. In response to the director's April 13, 2007 request for evidence that asked the applicant to provide the results of a tuberculin skin test, she provided a statement from [REDACTED] stating that the chest x-ray was the best diagnostic procedure to detect tuberculosis. [REDACTED] notes that many immigrants have been immunized against tuberculosis and that, as a result, tuberculin skin tests can result in false positives, which then require chest x-rays.

In her decision, the director stated that the Form I-693 submitted by the applicant is incomplete because her tuberculosis test has not been properly documented, as required by the Centers for Disease Control (CDC). See <http://www.cdc.gov/ncidid/dq/updates.htm>. She noted [REDACTED] statement regarding the likelihood that testing individuals immunized against tuberculosis will result in false positives, but did not find the record to indicate that the applicant is such an individual. Neither did the director find the record to document that the applicant qualifies for one of two CDC-designated exceptions to the skin test requirement. Accordingly, she found the applicant had failed to demonstrate that she has complied with the medical examination requirements of the Form I-693. The AAO does not agree.

The applicant has complied with the regulation at 8 C.F.R. § 209.2(d) that requires her to submit the results of a medical examination to allow a determination as to whether any of the grounds of inadmissibility described under section 212(a)(1)(A) of the Act apply to her. Although she has not submitted a tuberculin skin test to document that she is free of tuberculosis, the radiology report from Research Medical-Brookside OP in Kansas City, Missouri that accompanies the Form I-693 establishes that this is the case. Accordingly, the AAO finds that the applicant has complied with the medical examination requirements of the Form I-693 that she be screened for tuberculosis, even if the documentation of her compliance does not conform to the requirements of 42 C.F.R., the Public Health Service regulations that govern the medical examination of aliens.

The AAO notes the director's question regarding the authority of Citizenship and Immigration Services (CIS) to enforce the requirements of 42 C.F.R., but finds nothing in the regulations governing the adjustment of asylees under section 209 of the Act that would allow CIS officers to assume responsibility for directly regulating the performance of civil surgeons in the medical evaluation of adjustment applicants. Further, the *Adjudicator's Field Manual* indicates that in instances, like the present case, where a civil surgeon performs a chest x-ray rather than the tuberculin skin test required by 42 C.F.R. § 34.3(a)(2), the appropriate response is for the CIS office that granted the civil surgeon designation to advise the civil surgeon in writing of the deficiency and of the need to comply with CDC's *Technical Instructions*. Copies of the letter and the Form I-693 are to be sent to the Chief of the Migration Health Assessment Section, Division of Global Migration and Quarantine at CDC Headquarters in Atlanta, Georgia. Where a civil surgeon twice receives two such notices, a district director may take steps to revoke the civil surgeon designation.

Neither the regulation at 8 C.F.R. § 209.2(d) nor the *Adjudicator's Field Manual* support the denial of an

adjustment application where a civil surgeon has medically determined an applicant to be free of active tuberculosis, but has performed a chest x-ray rather than a tuberculin skin test to reach that determination. Accordingly, the director's decision will be withdrawn and the application will be approved.

In establishing eligibility for adjustment of status, the burden of proof remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden.

ORDER: The director's decision is withdrawn. The application is approved.