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U.S. Citizenship  
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HI

FILE:



Office: BANGKOK DISTRICT OFFICE

Date: AUG 24 2005

IN RE:



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

ON BEHALF OF APPLICANT:

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Immigration Attaché, Bangkok District Office. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal.

The applicant is a native and citizen of the Philippines who was found inadmissible to the United States under section 212(a)(1)(A)(iii)(I) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(1)(A)(iii)(I), as an alien classified as having a physical/mental disorder with associated behavior that may pose, or has posed, a threat to the property, safety or welfare of the alien or others (alcohol abuse.) The applicant seeks a waiver of this bar to admission in order to enter the United States as a permanent resident pursuant to an approved Form I-130, Immigrant Petition for Alien Relative, filed on his behalf.

The Acting Immigration Attaché denied the application for waiver, finding that the applicant continued to pose a threat to himself and others and was ineligible for a favorable exercise of discretion under section 212(g) of the Act.

On appeal, the applicant contends that he is not an alcohol abuser and he does not pose a threat to himself or others. He provides that he only engages in social drinking. The applicant submits two letters from his mother in support of the appeal.

Section 212(a) states, in pertinent part:

(a) Classes of Aliens Ineligible for Visas or Admission.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.—

(A) In general.—Any alien-

...

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General [now Secretary of Homeland Security])—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others

... is inadmissible.

(B) Waiver authorized.—For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

8 U.S.C. § 1182(a). The Acting Immigration Attaché based the finding of inadmissibility under this section on the applicant's diagnosis of a mental disorder with associated harmful behavior. Specifically, in connection with an immigrant petition, on August 5, 2003 a psychiatrist at St. Luke's Medical Center in Manila, Philippines made the following findings regarding the applicant:

**Current evidence of a mental disorder (Alcohol Abuse), with associated harmful behavior (engaging in physical fights when intoxicated). Applicant claims he abstained from alcohol in May, 2003, and has not fulfilled the criteria for remission. The harmful behavior is therefore deemed likely to recur. Referral to a physician or psychiatrist to treat the mental disorder is suggested.**

*Report of Salvador Benjamin D. Vista, M.D., St. Luke's Medical Center, p.2 (August 5, 2003)(emphasis in original).* Consultation with the Department of Human Services Centers for Disease Control and Prevention (CDC), as required by statute, resulted in the classification of the applicant as "Class A"<sup>1</sup> and inadmissible pursuant to section 212(a)(1)(A)(iii)(I) of the Act. In a letter dated September 4, 2003, a CDC official stated the following:

[O]ur psychiatrist indicates [that the applicant has a] "long history of alcohol abuse with associated harmful behavior. Needs alcohol treatment and 2 years of documented abstinence to be considered in full sustained remission." Based on the information presented for review, we believe that this applicant will benefit from [an] alcohol treatment program if a waiver is granted and he enters the United States.

*Letter from James E. Barrow, Chief, Program Operations Branch, Division of Global Migration and Quarantine, National Center for Infectious Diseases at 1-2 (September 4, 2003).*

On appeal, the applicant contests the finding of inadmissibility. The applicant and his mother contend that he is not an alcohol abuser and he does not pose a threat to himself or others. However, the applicant has provided no conclusive documentation to support his assertion, such as evidence of his medical history. While the statements from the applicant and his mother are given due consideration, they are not, by themselves, sufficient evidence to show that the applicant does not suffer from alcohol abuse with associated behavior that may pose, or has posed, a threat to the property, safety or welfare of the alien or others. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The documentation submitted on appeal is not sufficient to overcome the findings of the licensed psychiatrist at St. Luke's Medical Center. *Report of Salvador Benjamin D. Vista, M.D.,*

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<sup>1</sup> See 42 C.F.R. Ch 1. § 34.2(d)(2)(i), which provides, in pertinent part:

(d) *Class A medical notification.* Medical notification of:

...  
(2)(i) A physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others . . . .

*St. Luke's Medical Center* at 2. Based on the foregoing, the applicant has not overcome the finding that he is inadmissible under section 212(a)(1)(A)(iii)(I) of the Act.

Section 212(g) reads, in pertinent part:

(g) The Attorney General may waive the application of—

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the [Secretary], in the discretion of the [Secretary] after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

8 U.S.C. § 1182(g). Regulations at 8 C.F.R. § 212.7(b) govern aliens with certain mental conditions, who are eligible for immigrant visas but require the approval of waivers of grounds of inadmissibility. The regulations require that the applicant submit the waiver application and a statement to the appropriate CIS office indicating that arrangements have been made to provide the alien's complete medical history, including details of any hospitalization or institutional care or treatment for any physical or mental condition; the alien's current physical and mental condition, including prognosis and life expectancy; and a psychiatric examination. 8 C.F.R. § 212.7(b)(4). "For an alien with a past history of mental illness, the medical report shall also contain available information on which the U.S. Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery." *Id.* The medical report must then be forwarded to the U.S. Public Health Service for review. *Id.* These regulations further provide:

(ii) *Submission of statement.* Upon being notified that the medical report has been reviewed by the U.S. Public Health Service and determined to be acceptable, the alien or the alien's sponsoring family member shall submit a statement to the consular or [CIS] office. The statement must be from a clinic, hospital, institution, specialized facility, or specialist in the United States approved by the U.S. Public Health Service. The alien or alien's sponsor may be referred to the mental retardation or mental health agency of the state of proposed residence for guidance in selecting a post-arrival medical examining authority who will complete the evaluation and provide an evaluation report to the Centers for Disease Control. The statement must specify the name and address of the specialized facility, or specialist, and must affirm that:

(A) The specified facility or specialist agrees to evaluate the alien's mental status and prepare a complete report of the findings of such evaluation.

(B) The alien, the alien's sponsoring family member, or another responsible person has made complete financial arrangements for payment of any

charges that may be incurred after arrival for studies, care, training and service;

(C) The Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA. 30333 shall be furnished:

(1) The report evaluating the alien's mental status within 30 days after the alien's arrival; and

(2) Prompt notification of the alien's failure to report to the facility or specialist within 30 days after being notified by the U.S. Public Health Service that the alien has arrived in the United States.

(D) The alien shall be in an outpatient, inpatient, study, or other specified status as determined by the responsible local physician or specialist during the initial evaluation.

The record of proceeding reflects that the U.S. Public Health Service (PHS) received the required medical documentation regarding the applicant's present condition. *Form CDC 4,422-1, Part I, Statements in Support of Application for Waiver of Excludability, Executed by Tony D. Perez, Director, Division of Global Migration and Quarantine, National Center for Infectious Diseases* (November 19, 2003). The applicant then obtained the required statement from a PHS-approved doctor, as per 8 C.F.R. § 212.7(b)(4)(ii). *Form CDC 4,422-1, Part II, Executed by George Evanoff, M.D.* (January 7, 2004). The applicant's mother properly completed Part III of Form CDC 4,422-1, attesting that necessary arrangements for further examination of the applicant will be made upon his entry to the United States. On January 22, 2004, a PHS reviewing official approved the applicant's Form CDC 4,422-1, thus certifying PHS's opinion that appropriate follow-up care will be provided upon the applicant's entry to the United States, and that PHS has no objection to his entry.

The Acting Immigration Attaché found that the applicant submitted a properly executed Form CDC 4,422-1, thus establishing eligibility for a waiver under section 212(g) of the Act. Yet, the Acting Immigration Attaché noted that eligibility should not be construed as approval, as CIS must determine whether the applicant merits a favorable exercise of discretion. The Acting Immigration Attaché referenced CDC guidelines that provide that "it can be safely determined that a person is in remission if the alien has not shown any pattern of the disorder for the past five years." The Acting Immigration Attaché stated that "[p]sychiatric evaluations have determined that [the applicant's] condition is not yet in remission and that said harmful behavior is likely to recur." The Acting Immigration Attaché cited no additional factors or evidence that would indicate that the applicant does not merit a favorable exercise of discretion, thus, the Acting Immigration Attaché based the decision solely on the fact that less than five years prior to the filing of the waiver application the applicant was diagnosed with the condition that gave rise to inadmissibility.

The AAO notes that PHS is comprised of health professionals. As discussed above, a PHS reviewing official found that the applicant will receive appropriate follow-up care upon his entry to the United States, and that PHS has no objection to his entry. While a PHS official found that the applicant "[n]eeds alcohol treatment and 2 years

of documented abstinence to be considered in full sustained remission," PHS endorsed the applicant's entry to the United States by approving Form CDC 4,422-1. PHS approval will not, by itself, warrant the approval of a waiver. As correctly indicated by the Acting Immigration Attaché, CIS must evaluate all positive and negative factors in order to determine whether the applicant merits a favorable exercise of discretion. The Acting Immigration Attaché referenced CDC guidelines regarding evaluating the persistence of a medical condition. Yet, CIS's application of such general guidelines may not supplant the analysis of an individual case by a PHS medical professional. As in the instant matter, when a PHS reviewing official has indicated that PHS has no objection to an applicant's entry to the United States, and in the absence of current documentation that supports that the applicant's mental health status poses a threat, CIS may not deem the applicant's present mental health status to be a negative factor in evaluating an application for a waiver.

As the applicant's current health status is not a negative factor, the Acting Immigration Attaché identified no valid negative factors that reflect that the applicant does not merit a favorable exercise of discretion. Upon careful review of the record of proceeding, the AAO finds no evidence of negative factors. Accordingly, the appeal will be sustained, and the application for a waiver will be approved as a matter of discretion.

**ORDER:** The appeal is sustained.