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U.S. Department of Homeland Security
20 Mass., Rm. A3042
Washington, DC 20529

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U.S. Citizenship
and Immigration
Services

[REDACTED]

HI

FILE:

[REDACTED]

Office: MIAMI DISTRICT OFFICE

Date: **JAN 28 2005**

IN RE:

[REDACTED]

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:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office



DISCUSSION: The waiver application was denied by the District Director, Miami. The matter is now before the Administrative Appeals Office (AAO) on appeal. The case remanded to the district director for further action and consideration.

The applicant is a native and citizen of Jamaica who was found inadmissible to the United States under section 212(a)(1)(A)(iii) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(1)(A)(iii), as an alien classified as having a 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. The applicant seeks a waiver of this permanent bar to admission in order to adjust her status to lawful permanent resident as the beneficiary of an approved relative petition filed by her U.S. citizen spouse of 10 years. The applicant has three U.S. citizen children.

The district director denied the application for waiver, finding that the applicant continued to pose a threat to herself and others and was ineligible for a favorable exercise of discretion under section 212(g)(3) of the Act.

On appeal, counsel contends that the applicant is no longer a threat to herself and others and qualifies for a favorable exercise of discretion. Counsel further contends that the applicant's family would suffer extreme hardship if she is refused admission.

Counsel requests oral argument in connection with the appeal. Regulations governing these proceedings, at 8 C.F.R. § 103.3(b), provide that the affected party must explain in writing why oral argument is necessary. CIS has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. Counsel contends that in-person observation of the applicant is required in order to assess her mental stability. The AAO does not have the medical expertise required to accurately determine the mental stability of an individual. The AAO must rely on the evidence in the record, including professional medical opinions, in order to reach a decision under the law as applied to this case. Consequently, the request for oral argument is denied.

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, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior . . . 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 district director based the finding of inadmissibility under this section on the applicant's 1998 diagnosis of bipolar disorder and eight arrests for various erratic and violent behavior, apparently stemming from her illness, including three offenses involving battery of a law enforcement officer. 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" and inadmissible. *Letter from Chief, Migration and Health Assessment Section, Division of Quarantine* (August 24, 2000).¹ The CDC noted that the applicant exhibited "current, and a history of harmful behavior in association with this mental disorder, and the behavior has been judged as likely to recur. . . . We recommend continued psychiatric care if a waiver is granted and the applicant's status is adjusted." *Id.* The applicant does not contest the finding of inadmissibility, but contends she qualifies for a waiver.

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.

¹ See 42 C.F.R. Ch 1. § 34.2(d)(2)(i), (ii), 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;
 - (ii) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior.

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 Service 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 Service 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.

While it appears that the district director appropriately consulted with the CDC prior to the inadmissibility determination, it does not appear that an additional consultation occurred with the U.S. Public Health Service (PHS) after the applicant filed the application for waiver and prior to the denial, or that a *Request for Evidence* was issued for the required documentation, as described above, for submission to PHS as required by 8 C.F.R. 212.7(b)(4).

The AAO therefore remands the instant case to the district director for further proceedings as prescribed by 8 C.F.R. § 212.7(b)(4).

The AAO further notes that the applicant's extended criminal history may render her inadmissible under INA §§ 212(a)(2)(A)(i)(I) or 212(a)(2)(B), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I) or (a)(2)(B). It does not appear that inadmissibility under these sections was considered below. The standard of eligibility for a waiver of inadmissibility under these sections, found in INA § 212(h), differs from the standard applied to inadmissibility for mental health concerns under 212(a)(1)(A)(iii), found in 212(g). Therefore, the AAO recommends that the district director resolve the issue of whether the applicant will require a waiver of inadmissibility under 212(h) on remand and proceed accordingly.

ORDER: The decision of the district director is withdrawn and the case remanded to the district director for further action and consideration as indicated above.