



U.S. Citizenship
and Immigration
Services

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FILE:



Office: MANILA, PHILIPPINES

Date: **AUG 14 2008**

IN RE:



APPLICATION:

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 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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-In-Charge (OIC), Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant appears to be represented; however, the individual listed, as a representative on appeal is not authorized under 8 C.F.R. 292.1 or 292.2 to represent the applicant. The decision will be furnished only to the applicant.

The record reflects that the applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to 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 who was determined to have a physical or mental disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others. The record indicates that the applicant is the son of a United States citizen and that he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(g) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen mother and siblings.

The OIC found that “sufficient time has not elapsed in order to safely establish that [the applicant is] in remission” from his dependence on alcohol; therefore, he is ineligible for “a favorable exercise of discretion.” *Decision of the OIC*, dated April 7, 2006. The OIC denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Id.*

On appeal, the applicant’s sister states the applicant is not dependent on alcohol and only drinks in social settings. *See affidavit from* [REDACTED], dated May 10, 2006. The applicant provided a psychiatric report, psychological report, and reports from the Institute of Pathology. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a) of the Act provides, in pertinent part, that:

(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, Department 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).

The OIC based his finding of inadmissibility under section 212(a)(1)(A)(iii)(I) of the Act, from the May 3, 2005, certification by the United States Department of Health and Human Services, Centers for Disease Control (CDC), that the applicant had a Class A medical condition. *Decision of the OIC, supra*. In its letter of Class A certification, the CDC indicated that its psychiatrist stated “that the applicant began drinking alcohol when he was 19 years old...[When he retired in 2000], the applicant’s consumption of alcohol increased to about 150 ml of gin, or the equivalent in beer, daily, up to the present. According to the report, in 2000, the applicant was involved in an accident while riding a bicycle intoxicated which resulted in a scalp wound.” *Letter of S. [REDACTED], M.D., Acting Chief, Immigrant, Refugee and Migrant Health Branch, Division of Global Migration and Quarantine (EO3), National Center for Infectious Diseases*, dated May 3, 2005. The letter from the CDC further stated that “[r]egarding this applicant, our psychiatrist indicates ‘long history of alcohol abuse escalating in recent years to dependence level. Associated harmful behavior is likely to recur. Needs treatment and 2 years abstinence documented to be judged in full, sustained remission.’” *Id.* The applicant does not contest the finding of inadmissibility.

Section 212(g) of the Act provides, in pertinent part, that:

(g) The [Secretary] 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.

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; findings as to 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 referred 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.

The AAO finds that all of these regulations have been complied with. The OIC denied the applicant's Form I-601 "as a matter of discretion." *Decision of the OIC, supra*. The OIC partially based his decision on "[h]armful behavior is judged as likely to recur – vehicular accident." *Id.* The applicant was involved in "an accident while riding a bicycle intoxicated which resulted in a scalp wound." *Letter of [REDACTED] M.D., Acting Chief, Immigrant, Refugee and Migrant Health Branch, Division of Global Migration and Quarantine (EO3), National Center for Infectious Diseases, supra*. The AAO notes that there is no evidence in the record that the applicant was seriously injured or that he injured anyone else. The applicant's sister states she is very close to the applicant and if he was dependent on alcohol, she would be "the first individual to either find out or know about it." *See affidavit from [REDACTED] supra*. The applicant's sister claims the applicant is not involved "with any type of social malfunctioning to stipulate or indicate that he was an alcoholic or indeed excessively consuming any type of alcoholism [sic]." *Id.* It is noted that more than three years have now passed since the CDC indicated that a two-year history of documented abstinence from alcohol was required for the applicant to be considered in "full, sustained remission." On appeal, the applicant submitted a clinical blood alcohol biochemistry report, dated May 20, 2006, establishing that the applicant had less than 10 mg/dl of alcohol in his blood at that time. *Clinical Biochemistry Report, Institute of Pathology, St. Luke's Medical Center, dated May 20, 2006*. Therefore, the AAO finds that given all the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.