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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

H/1



FILE: [REDACTED] Office: DENVER, COLORADO Date: MAY 19 2009

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); Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Denver, Colorado. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot. The matter will be returned to the district director for continued processing.

The applicant is a native and citizen of Mexico who was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. He was further found inadmissible under section 212(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. 1182(a)(1)(A)(iii)(II), 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 inadmissibility in order to remain in the United States and adjust his status to permanent resident.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife. *Decision of the District Director*, dated February 21, 2006. The district director further found that the applicant failed to show that he no longer has a Class A medical condition. *Id.* at 2. The district director denied the Form I-601, Application for Waiver of Ground of Inadmissibility accordingly. *Id.*

On appeal, the applicant asserts that he filed the present appeal due to a misunderstanding with court dates, arrest dates, and alcohol therapy. *Statement from the Applicant on Form I-290B*, dated July 24, 2006.

The record contains a statement from the applicant on Form I-290B; documentation relating to the applicant's guilty plea to Driving While Ability Impaired (driving under the influence of alcohol); a letter reflecting that the applicant successfully participated in an alcohol education and therapy program; a Form CDC 4,422-1 from the U.S. Department of Health and Human Services, Public Health Service; information regarding the applicant's unlawful presence in the United States; documentation in connection with the applicant's application for a K visa; documentation in connection with the applicant's prior Form I-601 application for a waiver, and; documentation that reflects that the applicant's prior Form I-601 application was approved. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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])—

...

(II) to have had a physical or mental disorder and behavior associated with the disorder that has posed, or 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

... is inadmissible.

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

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.

Upon review, the record reflects that the applicant was diagnosed with alcoholism, a Class A medical condition. Thus, he was found inadmissible under section 212(a)(1)(A)(iii)(II) of the Act. The record further shows that the applicant entered the United States without inspection on or about May 3, 1998, and he remained until he voluntarily departed on or about January 14, 2004. Thus, the applicant accrued over five years of unlawful presence in the United States. The applicant filed a Form I-29F petition to obtain K-3 status. Thus, the applicant was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure.

The applicant previously filed a Form I-601 application for a waiver on January 12, 2005 to waive his inadmissibility based on the above-stated facts. On July 6, 2005, the U.S. Department of Homeland Security submitted a memorandum to the U.S. Department of State indicating that the applicant's Form I-601 application had been approved, and that his inadmissibility under sections 212(a)(1)(A)(iii)(II) and 212(a)(9)(B)(II) of the Act had been waived. Based on this approval, the U.S. Department of State issued a K visa to the applicant and he entered the United States.

The applicant submitted a second Form I-601 application for a waiver on February 16, 2006. As noted above, the district director denied the application on February 21, 2006. The district director referenced facts regarding the applicant's history with alcohol, yet none of the facts occurred after the approval of his prior Form I-601 application was filed and approved. The record does not reflect that events have occurred since the approval of the applicant's prior Form I-601 that give rise to further inadmissibility, such as additional unlawful presence and departure, or alcohol use that undermines the certified opinion of the U.S. Public Health Service (PHS) that appropriate follow-up care would be provided upon the applicant's entry to the United States. *See Form CDC 4,422-1, Part II,*

Executed by [REDACTED] (March 22, 2005). The record does not contain evidence that the applicant is inadmissible based on alternate grounds.

Based on the foregoing, the applicant's inadmissibility under sections 212(a)(1)(A)(iii)(II) and 212(a)(9)(B)(II) of the Act has already been considered by U.S. Citizenship and Immigration Services, and his inadmissibility has been waived. Accordingly, the applicant does not require the present Form I-601 application for a waiver. The waiver application will be declared moot and the appeal will be dismissed.

ORDER: The appeal is dismissed as the underlying waiver application is moot. The district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.