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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H1

DATE: APR 05 2011

Office: [REDACTED]

FILE: [REDACTED]

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Immigration [REDACTED]. On appeal, the Administrative Appeals Office (AAO) withdrew the decision of the acting immigration [REDACTED] and remanded the matter for further consideration. On remand, the waiver application was denied by the Field Office Director. The matter is again before the AAO on appeal. The appeal will be dismissed.

The applicant, a native and citizen of the [REDACTED] was found inadmissible to the United States under section 212(a)(1)(A)(iii) of the Immigration and Nationality Act, (INA, 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 inadmissibility so that he may immigrate to the United States and live with his U.S. citizen spouse.

The Acting Immigration Attaché denied the Form I-601, Application for Waiver of Ground of Excludability (Form I-601), finding that the applicant continued to pose a threat to himself or others and was ineligible for a favorable exercise of discretion. *Decision of the Acting Immigration [REDACTED]* dated August 31, 2004.

On appeal, the AAO concluded as follows:

The OIC appropriately consulted with the [REDACTED] prior to the inadmissibility determination, but did not consult with [REDACTED] after the applicant filed the application for waiver and prior to the denial, as is required by 8 C.F.R. 212.7(b)(4). Further, the OIC did not make a *Request for Evidence* for the documentary evidence required by 8 C.F.R. 212.7(b)(4). It is noted that more than two years have now passed since the [REDACTED] indicated that a two-year history of documented abstinence from alcohol was required for the applicant to be considered in 'full, sustained remission.' The applicant should be afforded the opportunity to present evidence concerning whether and to what extent he has used alcohol during the last two years. The AAO therefore remands this matter to the OIC for action as prescribed by 8 C.F.R. § 212.7(b)(4).

Decision of the AAO, dated July 18, 2006.

In the subsequent denial of the waiver application, the field office director first explained that a consular investigation found numerous discrepancies relating to the evidence previously provided by the applicant with respect to his sobriety, including the failure to establish that he had enrolled and successfully completed an alcohol rehabilitation program and had been sober for at least two years. The field office director further noted that a Request for Additional Evidence had been issued to the applicant in March 2008, requesting an updated Mental Health Screening from [REDACTED] and any documents that supported a remission of mental illness, but the applicant had failed to respond to the request. The field office director concluded that "it has not been adequately

demonstrated that Applicant's physical or mental disorder (with a history of behavior which has posed a threat to the property, safety or welfare of Applicant or others) is unlikely to recur or to lead to other harmful behavior...." *Decision of the Field Office Director*, dated August 5, 2008.

On appeal, the applicant submitted a letter from [REDACTED] confirming that the applicant was evaluated on two occasions in August 2008, noting that the applicant admitted to only being an observer in treatment sessions and not an actual client, and concluding that "there is a high probability that [REDACTED] [the applicant] has not been actively drinking alcohol. It is also recommended that [REDACTED] regularly follow-up with the undersigned or a substance abuse specialist of his own choosing. This is to monitor [REDACTED] drinking habit and pattern, liver status and enzyme." *Letter from* [REDACTED] dated August 30, 2008. The applicant also submitted support letters from his spouse and two neighbors, detailing the applicant's sobriety.

INA § 212(a), 8 U.S.C. § 1182(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).

The Acting Immigration [REDACTED] and the Field Office Director based their finding of inadmissibility under this section on the January 23, 2004 certification by the [REDACTED] that the applicant had a Class A medical condition. In its letter of Class A certification, the [REDACTED] indicated that its psychiatrist stated that the applicant had a “long history of alcohol abuse and history of associated harmful behavior.” Although “use has decreased ... a history of 2 years documented abstinence is needed to be considered in full, sustained remission.... It is recommended that the applicant be enrolled in an alcohol rehabilitation program and be followed closely by a physician with experience in managing patients with alcohol-related medical programs....” *Letter from* [REDACTED] [REDACTED] dated January 23, 2004. The applicant does not contest the finding of inadmissibility.

INA § 212(g), provides, 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.

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, [REDACTED] 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.

As noted in detailed above, the applicant must demonstrate a history of 2 years documented abstinence from alcohol to establish remission. *Supra* at 2. As the applicant has failed to establish he is in full, sustained remission after having been afforded an opportunity to submit evidence of 2 years of sobriety, he remains inadmissible under section 212(a)(1)(A)(iii)(I) of the Act, as an alien with a Class A medical condition.

On remand, the USCIS— [REDACTED] requested that the applicant submit evidence in support of his waiver application concerning his enrollment in an alcohol rehabilitation program. The documentation submitted by the applicant was found to be misleading and deficient after a consular investigation revealed he had never enrolled in a treatment program as he had stated.

On appeal, the documentation provided by the applicant is deficient in light of the fact that the applicant has failed to establish that he has received professional intervention, as prescribed by [REDACTED]. The applicant was afforded the opportunity to provide an updated Mental Health Screening from [REDACTED] and has failed to do so. As a result, the Field Office Director was unable to consult with the [REDACTED] as required by 8 C.F.R. 212.7(b)(4), to obtain 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.

As the applicant has failed to establish two years documented abstinence from alcohol as needed to be considered in full, sustained remission he is still inadmissible under Section 212(a)(i)(A)(iii) of the Act and requires a waiver of inadmissibility. He has failed to submit requested evidence in support of the waiver application, including evidence that he has enrolled in an alcohol rehabilitation program as recommended. Accordingly, the application for waiver of grounds of inadmissibility under section 212(g) the Act cannot be granted. The decision of the field office director to deny the waiver application will be affirmed.

In proceedings for application for a waiver of grounds of inadmissibility under sections 212(g) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.