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U.S. Citizenship and Immigration Services

H1

[redacted]

FILE: [redacted] Office: BANGKOK DISTRICT OFFICE Date: AUG 22 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:

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. The applicant seeks a waiver of this bar to admission in order to enter the United States in K-1 status to marry her fiancé and adjust her status to permanent resident.

The Acting Immigration Attaché 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) of the Act.

On appeal, the applicant contends that the original psychiatric evaluation used to determine that she is inadmissible is erroneous. The applicant submits documentation to support this assertion, including a letter from her fiancé in which he discusses alleged irregularities and misunderstandings in the psychiatric evaluation process, a letter from her employer, and a letter from the discipline officer of her former university.

The applicant 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. Citizenship and Immigration Service (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. The applicant submits a letter from her fiancé in which he requests an oral argument "to demonstrate [his] full support for [the applicant] and to address any questions regarding her case." The applicant fails to identify any unique factors or issues of law that cannot be fully addressed with documentary evidence. 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
>
> . . . 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 an immigrant petition, on August 25, 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 (Dysthymia with Major Depressive Disorder, recurrent, with psychotic features) with associated harmful behavior (taking an overdose of decongestant tablets). At the present time, the harmful behavior is judged likely to recur. Immediate psychiatric intervention is recommended.**" *Report of Alpha M. Paradela, M.D., St. Luke's Medical Center*, p.2 (August 25, 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"[1] and inadmissible pursuant to section 212(a)(1)(A)(iii)(I) of the Act.

On appeal, the applicant contests the finding of inadmissibility. The applicant contends that the original psychiatric evaluation used to determine that she is inadmissible was erroneous. The applicant submits a letter from her fiancé in which he asserts that the applicant has never exhibited psychotic features, as she has never experienced hallucinations or delusions, she has no history of substance abuse, and her schooling has never been interrupted due to mental illness, physical trauma, or life threatening diseases. *Brief in Support of Appeal*, p.1, received May 26, 2004. The applicant's fiancé indicates that the applicant sought an evaluation from the applicant's personal psychiatrist, [redacted] of AFP Hospital in Quezon City, Philippines, in order to contest the applicant's diagnosis. *Id.* The applicant's fiancé provides that the report from St. Luke's Medical Center overstates the amount of decongestant tablets the applicant consumed at the age of 15, and that the applicant at no time intended to take her own life. *Id.* at 2. The applicant's fiancé states that, during the psychiatric exam at St. Luke's Medical Center, the applicant erroneously admitted that she had experienced a nervous breakdown, as she did not understand the definition of the term. *Id.* at 2.

The applicant submits a letter from the president of her employer, in which he confirms that she had worked there continuously for four months as of the date of the correspondence, and that she "has been cleared from all accountabilities and liabilities in the company." *Letter from Mr. Jung Jin Seung, President, JJ Language Center, Inc.*, February 27, 2004. The applicant further included a letter from the discipline officer of De La

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[1] *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:
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> . . .
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> (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 . . . .

Salle University, attesting that she was not involved in any disciplinary case during her attendance from 1997 to 2002.

Upon review, the applicant has not established that the finding of inadmissibility was erroneous. Though the applicant's fiancé indicates that the applicant sought a new psychiatric evaluation from a separate doctor, the applicant has not presented documentation of this exam, or any other medical documentation from qualified professionals that refutes the initial diagnosis. 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)). While the statements from the applicant's spouse are given careful consideration, the record does not reflect that he is qualified to contest the findings of St. Luke's Medical Center. Likewise, letters from the applicant's employer and prior university support that she did not experience difficulty with either institution, yet they are insufficient to show that the applicant was misdiagnosed. Based on the foregoing, the applicant has not overcome the finding that she 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—
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> > (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.
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> (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:
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> (*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.
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> (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 4, 2003). The applicant then obtained the required statement from a PHS-approved facility, as per 8 C.F.R. § 212.7(b)(4)(ii). *Form CDC 4,422-1, Part II, Executed by Chris Wassmuth, Program Manager, Wake County Human Services* (February 4, 2004). The applicant's fiancé properly completed Part III of Form CDC 4,422-1, attesting that necessary arrangements for further examination of the applicant will be made upon her entry to the United States. On February 12, 2004, a PHS reviewing official approved the applicant's Form CDC 4,422-1, thus certifying that appropriate follow-up care will be provided upon her entry to the United States, and that PHS has no objection to her entry.

The Acting Immigration Attaché noted 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. Despite the findings of PHS, the Acting Immigration

Attaché determined that "[p]sychiatric evaluations have determined that [the applicant's] condition is not yet in remission and that . . . harmful behavior is likely to recur." 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 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 the PHS is comprised of health professionals. As discussed above, a PHS reviewing official found that the applicant will receive appropriate follow-up care upon her entry to the United States, and that PHS has no objection to her entry. 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.