

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue, NW, Rm. 3000
Washington, DC 20529-2090

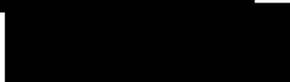


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

41

FILE:



Office: MANILA, PHILIPPINES

Date:

DEC 19 2008

IN RE:

Applicant:



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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Manila, Philippines. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the OIC will be withdrawn and the matter remanded for further action consistent with this decision.

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) 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 inadmissibility so that he may immigrate to the United States and live with his U.S. citizen wife.

The OIC denied the application for waiver, finding that sufficient time had not elapsed to safely establish that the applicant was in remission and that there was no evidence to indicate reformation to warrant a favorable exercise of discretion.

On appeal, the applicant submits a letter stating that he wishes to see his family in the United States, and that he “shall not be a nuisance to the government of the United States.”

Section 212(a) of the Act, 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 OIC based the finding of inadmissibility under this section on a certification by the United States Centers for Disease Control (CDC) that the applicant had a Class A medical condition. In its letter of Class A certification, the CDC indicated that its psychiatrist stated that the applicant had a long history of alcohol abuse and history of associated harmful behavior which is judged likely to recur. *Letter of [REDACTED], Acting Chief, Immigrant, Refugee and Migrant Health Branch, Division of Global Migration and Quarantine (EO3), National Center for Infectious Diseases, March 13, 2006.* The letter from the CDC further stated: “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 problems if a waiver is granted and he enters the United States.” *Id.* The applicant does not contest the finding of inadmissibility.

Section 212(g) of the Act, 8 U.S.C. § 1182(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.

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.

The OIC appropriately consulted with the CDC Public Health Service (PHS) prior to the inadmissibility determination, but did not consult with PHS 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 CDC 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).

ORDER: The decision of the OIC is withdrawn. The matter is remanded to the OIC for further action consistent with this decision.