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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: APR 0 5 2013 OFFICE: CIUDAD JUAREZ, MEXICO FILE: [redacted]

IN RE: [redacted]

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:

[redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(1)(a)(iii), for having a physical or mental disorder with associated harmful behavior. The applicant is the son of a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(g) of the Act, 8 U.S.C. § 1182(g), in order to reside in the United States.

The Field Office Director stated that he would not favorably exercise discretion under section 212(g) of the Act and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director,* dated October 19, 2010.

On appeal, counsel states that the applicant does not pose a threat to himself or others as he does not suffer from a disorder that is likely to recur and, alternately, that the Field Office Director should favorably exercise discretion in this matter as the positive factors in the applicant's case outweigh the negative. *Form I-290B, Notice of Appeal or Motion*, dated November 8, 2010; *see also Counsel's Brief.*

The record of evidence includes, but is not limited to: counsel's briefs; statements from the applicant's father; medical documentation relating to the applicant's father; a psychological evaluation of the applicant; a psychological services medical report on the applicant; printouts of online articles on medical conditions; employment letters for the applicant and his father; and court records relating to the applicant. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(1) of the Act states, in pertinent part:

> (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.

The record contains a December 9, 2009 DS-2054, Medical Examination for Immigrant or Refugee Applicant, that indicates the applicant has a Class A medical condition that bars his admission to the United States under section 212(a)(1)(A)(iii) of the Act. The DS-2054 finding is based on a December 9, 2009 psychological report prepared by [redacted] and [redacted] of the [redacted] which diagnoses the applicant with pedophilia and finds evidence of harmful behavior that is likely to recur. In preparing their report, the evaluators indicated that they had reviewed forensic psychological reports from the applicant's trial, which they found to overwhelmingly establish that the applicant had sexually abused a three-year-old girl.

On appeal, counsel asserts that although the applicant was tried on charges of raping a three-year-old girl when he was 16 years old, the charge against him was dropped as the court concluded that he did not commit the crime. He states that the November 10, 2007 dismissal of the rape charge against the applicant by the Municipal Court for Minor Offenders in the City of Cuauhtemoc, State of Chihuahua, demonstrates that the applicant suffers from no mental health disorder that is likely to recur and, therefore, does not pose a threat to himself or to others. He further contends that the forensic psychological reports referenced in the December 9, 2009 evaluation of the applicant are likely the same reports to which the court had access prior to determining that the applicant was not guilty of rape. Therefore, counsel maintains, the evaluators who prepared the December 9, 2009 psychological report on the applicant erred in concluding that these reports provided "overwhelming" evidence of rape and that such a conclusion was beyond their "scope." He further asserts that the Field Office Director erred in concluding that the applicant's harmful behavior might recur when there was no harmful behavior in the first place.

The determination of whether a visa applicant is inadmissible to the United States on the basis of a physical or mental condition with associated harmful behavior is a medical decision made, after appropriate consultation, by an overseas panel physician who operates under regulations issued by the Department of Health and Human Services. Pursuant to 42 C.F.R. § 34.3(i), overseas panel physicians carry out their examinations in accordance with the Technical Instructions for Medical Screening of Aliens issued by the Division of Global Migration and Quarantine (DGMQ), Centers for Disease Control. Therefore, while the AAO notes counsel's assertions regarding the Cuauhtemoc court's dismissal of the rape charges against the applicant and what he asserts is the resulting unreliability of the December 9, 2009 evaluation on which the applicant's medical inadmissibility is based, we have neither the authority nor the expertise to reevaluate the findings reached by the panel physician who oversaw the applicant's medical examination. As the applicant has been found to suffer from a mental health condition with associated harmful behavior by a designated panel physician, he is inadmissible to the United States pursuant to section 212(a)(1)(A)(iii) of the Act.

A waiver of a section 212(a)(1)(A)(iii) inadmissibility is provided by section 212(g) of the Act, which states:

> (g) The Attorney General [Secretary of Homeland Security] 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.

The AAO finds the applicant to have submitted the assurances required for the approval of a section 212(g) waiver. The record contains a completed Centers for Disease Control Form CDC4.422-1, Statements in Support of Application for Waiver of Inadmissibility under Section 212(a)(1)(iii)(I) or 212(a)(1)(A)(iii)(II) of the Act, which is accompanied by a July 20, 2010 statement from who indicates that his agency is ready to provide a planned treatment program for the applicant in the United States and to monitor the applicant's compliance with that program. However, while the applicant has complied with section 212(g) waiver requirements, the grant of a waiver under the Act is ultimately discretionary and, in the present matter, we do not find a favorable exercise of discretion to be warranted.

In reaching this decision, we have noted the positive factors that support the grant of a section 212(g) waiver, the strongest of which are the applicant's U.S. citizen father and his father's health problems. These factors do not, however, outweigh the overriding public safety concerns presented by the applicant's diagnosis of pedophilia and the finding in the December 9, 2009 psychological evaluation that the harmful behavior associated with this diagnosis is likely to recur. Counsel asserts that the dismissal of the criminal charge against the applicant establishes that he never committed the act that led to the diagnosis of pedophilia. While we accept that the translated court transcript demonstrates that the legal elements of the crime of rape were not established, it does not necessarily follow that the applicant did not engage in a type of sexual abuse lacking some element essential to the statutory crime of rape. Moreover, although counsel contends that the December 9, 2009 evaluation of the applicant is suspect as it may have relied on reports that the court found did not support a rape conviction, the record contains no other evidence demonstrating the evaluation's conclusions are inaccurate. The panel physician reported that the applicant indicated that he was "processed for sexual child abuse" after the charges of rape were dismissed. We give significant weight to the findings of the panel physician concerning the applicant's mental condition and the possibility of recurrence of harmful behavior. Accordingly, the appeal will be dismissed in the exercise of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(g) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.