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**U.S. Citizenship
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FILE:



Office: SEATTLE, WA

Date: DEC 19 2007

IN RE:



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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Seattle, Washington. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Vietnam 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 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 this permanent bar to admission.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 25, 2006.

On appeal, the applicant's lawful permanent resident mother states that she would suffer extreme hardship if separated from her family. *Form I-694 and attached statement from the applicant's mother*, dated October 23, 2006.

Section 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).

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. The District Director found the applicant inadmissible under section 212(a)(1)(A)(iii)(I) of the Act. *Decision of the District Director*, dated September 25, 2006. The AAO notes that the determination of inadmissibility under section 212(a)(1)(A)(iii)(I) of the Act is made by a certified civil surgeon on Form I-693, Medical Examination of Aliens Seeking Adjustment of Status (Form I-693). The record contains two Forms I-693, one dated April 10, 1998 and one dated March 18, 2003. On neither of these forms did the civil surgeon determine that the applicant had a Class A medical condition rendering him inadmissible. They were, however, both completed prior to the applicant's 2005 hospitalization in a psychiatric hospital.

The record reflects that on May 3, 2006 the Acting District Director issued a notice of Intent to Deny, requesting that the applicant submit a Form I-693, including medical records from West Seattle Psychiatric Hospital; a Form I-601, Application for Waiver Grounds of Excludability; and certified copies of the final court disposition for the August 17, 2000 arrest for assault/disorderly conduct. *See Acting District Director's Intent to Deny*, dated May 3, 2006. On June 1, 2006 the applicant submitted the Form I-693 dated April 10, 1998 and a Form I-601, but no current medical records.

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this Act, and, if an alien, that he is entitled to the nonimmigrant, immigrant, special immigrant, immediate relative, or refugee status claimed, as the case may be. *See* Section 291 of the Act, 8 U.S.C. § 1361.

While the applicant has not technically been found to be inadmissible, there is sufficient information in the record to determine that he may, in fact, be inadmissible and in need of a waiver. By failing to comply with the Acting District Director's instructions to submit a current Form I-693, the applicant has not met his burden of showing that he is admissible. Accordingly, the waiver application is moot and the appeal will be dismissed.

ORDER: The appeal is dismissed.