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

U.S. Citizenship
and Immigration
Services

H1

FILE:

Office: MANILA, PHILIPPINES

Date: APR 22 2009

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Manila, Philippines. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 mental disorder (alcohol abuse) 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 in order to reside in the United States.

The officer-in-charge denied the application for waiver as a matter of discretion. *Decision of the Officer-in-Charge*, at 3, dated October 26, 2006.

In support of his appeal, the applicant submits a newly issued medical certificate, a copy of his driver's license and business records.

The record reflects that the applicant was diagnosed by a panel psychiatrist as having a mental disorder (alcohol abuse) associated with harmful behavior with the harmful behavior likely to recur. *Psychiatry Report by [REDACTED]*, at 2, dated October 27, 2005. Consultation by the officer-in-charge with the Department of Health and Human Services, U.S. Public Health Service, (USPHS), resulted in the classification of the applicant as "Class A" and inadmissible. *Letter from Acting Chief, Refugee and Migrant Health Branch, Division of Global Migration and Quarantine*, at 1, dated February 2, 2006. The USPHS notes that the examining psychiatrist stated, "...alcohol abuse with associated harmful behavior. Needs treatment and a two year history of abstinence to be considered in full, sustained remission." Based on the findings, the USPHS recommended that the applicant be enrolled in an alcohol rehabilitation program and be followed closely by a physician experienced in managing patients with alcohol-related mental health problems if a waiver were granted. *Id.* at 2. As such, the applicant is inadmissible to the United States under section 212(a)(1)(A)(iii)(I) of the Act.

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, 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 relevant waiver for section 212(a)(1)(A)(iii)(I) of the Act is located at section 212(g) of the Act, which 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 health 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 U.S. Citizenship and Immigration Service (USCIS) 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)(i). “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 USPHS for review. *Id.* Subsequent to the USPHS review, the applicant must comply with the requirements at 8 C.F.R. § 212.7(b)(4)(ii), which state:

(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 record reflects that the officer-in-charge appropriately consulted with the USPHS prior to the inadmissibility determination as required by 8 C.F.R. § 212.7(b)(4)(i). Furthermore, the applicant has

complied with the requirements at 8 C.F.R. § 212.7(b)(4)(ii), as reflected by the completed CDC 4,422-1 (Interim Form).

Therefore, the AAO will evaluate whether the applicant merits a waiver of inadmissibility as a matter of discretion.

The adverse factor is the applicant's mental disorder.

The favorable factors include the applicant's U.S. citizen sister, the approved I-130 Petition benefiting him, the evidence of business ownership and the evaluation supporting the applicant's August 16, 2006 claim that he has not had a drink since October 5, 2005.

The AAO finds that the applicant's disorder is serious in nature. Nevertheless, the AAO concludes that, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.