

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



H<sub>1</sub>

FILE:



Office: MANILA, PHILIPPINES

Date: JAN - 2 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

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 The decision of the officer-in-charge will be withdrawn and the case remanded for further action and consideration.

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, finding that there was no evidence to indicate that the applicant had been reformed and, therefore, eligible for a favorable exercise of discretion under section 212(g)(3) of the Act. *Decision of the Officer-in-Charge*, at 3, dated June 27, 2006.

On appeal, the applicant contends that he does not consider himself an alcoholic, he does not drink every day, it is stupidity of the highest degree to abuse it, if he were an alcoholic he would be dead by now and he is willing to submit to another psychiatric examination. *Form I-290B*, at 1-2, received July 17, 2006.

The record reflects that the applicant was diagnosed by a 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 September 8, 2005. Consultation by the officer-in-charge with the Department of Health and Human Services, U.S. Public Health Service, (PHS), 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 PHS noted that the applicant has a "long history of alcohol abuse with associated harmful behavior. Needs treatment and a two year history of abstinence to be considered in full, sustained remission" and it 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 is 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).

As mentioned previously, the applicant contends that he does not consider himself an alcoholic, he does not drink every day, it is stupidity of the highest degree to abuse it, if he were an alcoholic he would be dead by now and he is willing to submit to another psychiatric examination. *Form I-290B*, at 1-2. However, the applicant has not provided sufficient evidence to establish that he is not inadmissible under section 212(a)(1)(A)(iii)(I) of the Act. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. See *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)).

The relevant waiver for section 212(a)(1)(A)(iii)(I) of the Act is Section 212(g) 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

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)(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 U.S. Public Health Service for review. *Id.* After this, the requirements of 8 C.F.R. § 212.7(b)(4)(ii) must be met.

8 C.F.R. § 212.7(b)(4)(ii) states:

(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

(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.

While it appears that the officer-in-charge appropriately consulted with the PHS prior to the inadmissibility determination as required by 8 C.F.R. § 212.7(b)(4)(i), it does not appear that an additional consultation occurred prior to the denial as required by 8 C.F.R. § 212.7(b)(4)(ii). A *Request for Evidence* was not issued to the applicant to provide documentation required by CDC Form 4.422-1, which must be submitted for further action to be taken on the waiver application.

The AAO therefore remands the case to the officer-in-charge for further processing as prescribed by 8 C.F.R. § 212.7(b)(4)(ii).

**ORDER:** The decision of the officer-in-charge is withdrawn and the case remanded to the officer-in-charge for further action and consideration as indicated above.