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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: HIALEAH Date: NOV 10 2010

IN RE: Applicant: [REDACTED]

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:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider.

Thank you,

A handwritten signature in black ink that reads "Perry Rhew" with a stylized flourish at the end. Below the signature, the word "for" is written in a smaller, simpler script.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Hialeah, Florida and the decision was certified to the Administrative Appeals Office (AAO). The AAO will affirm the decision of the field office director.

The applicant is a native and citizen of Cuba who was found inadmissible to the United States under section 212(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. 1182(a)(1)(A)(iii)(I), as an alien classified as having a physical/mental disorder with associated behavior 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 in order to remain in the United States and adjust his status to lawful permanent resident.

The field office director denied the waiver application as a matter of discretion. *Decision of the Field Office Director*, dated February 24, 2010.

The record contains, but is not limited to, multiple psychological evaluations of the applicant; documentation in connection with criminal proceedings in which the applicant was acquitted of charges based on insanity; letters from the U.S. Department of Health and Human Services (HHS), Public Health Service, Centers for Disease Control and Prevention (CDC) regarding the applicant's mental health, and; a letter from a nonprofit agency, Passageway, to whom the applicant was conditionally released for treatment pursuant to a court order. The entire record was reviewed and considered in rendering a decision on the appeal.

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 . . . is inadmissible.

(B) Waiver authorized.—For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

Section 212(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.

8 U.S.C. § 1182(g). 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 a waiver application and a statement to the appropriate U.S. Citizenship and Immigration Services (USCIS) office indicating that arrangements have been made to provide his complete medical history, including details of any hospitalization or institutional care or treatment for any physical or mental condition; his 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.* The regulation at 8 C.F.R. § 212.7(b)(4)(ii) further provides:

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 [USCIS] 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 [REDACTED] 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 shows that the applicant has been diagnosed with a Class A medical condition, Schizophrenia, Paranoid Type, Chronic. *Letter from the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention*, dated October 7, 2008. The CDC stated that the applicant has a history of associated harmful behavior which is judged likely to recur, and that the applicant continues to be classified as Class A and inadmissible under section 212(a)(1)(A)(iii) of the Act. *Id.* at 1.

The record shows that, on November 23, 2000, the applicant stabbed two individuals in the chest for which he was charged with two counts of attempted first-degree murder. *Complaint/Arrest Affidavit*, dated November 23, 2000. On March 27, 2002, the applicant attempted to escape custody, yet he was apprehended a short time after. *Complaint/Arrest Affidavit*, dated March 27, 2002. On March 28, 2003, the applicant was acquitted of both attempted murder charges based on a finding of insanity. *Judgment of Acquittal by Reason of Insanity*, dated April 17, 2003. The applicant was conditionally released to reside at Passageway Residential Program in Miami, Florida for mental health treatment. *Order of Conditional Release*, dated September 9, 2003.

The most recent psychological evaluation for the applicant in the record, dated August 21, 2008, states that he "has recently become more paranoid and delusional as observed by staff," and that his mood is described as "weak, kind of depressed." *Medical Psychotherapy & Medication Review Form*, dated August 21, 2008.

Based on the foregoing, the record shows that the applicant is inadmissible under section 212(a)(1)(A)(iii) of the Act as an alien classified as having a physical/mental disorder with associated behavior that may pose, or has posed, a threat to the property, safety or welfare of the alien or others. Accordingly, he requires a waiver of inadmissibility under section 212(g) of the Act.

Upon review, the applicant has not shown that he is eligible for a waiver under section 212(g) of the Act. The applicant has not satisfied the requirements of 8 C.F.R. § 212.7(b)(4)(ii). The record contains a Form CDC 4,422-1, which serves as evidence of an applicant's compliance with 8 C.F.R. § 212.7(b)(4)(ii). However, Part III of Form CDC 4,422-1 has been left blank. This section of the form contains, in part, a certification that necessary expenses required for the applicant's examinations or treatment will be met, and that he will not become a public charge. *See* 8 C.F.R. § 212.7(b)(4)(ii)(B).

The record shows that USCIS contacted the director of [REDACTED] regarding the incomplete Form CDC 4,422-1, and to inquire regarding its financial responsibility for the applicant's treatment. However, USCIS was informed that, pursuant to a court order, the applicant was eligible for funding for his treatment not to exceed seven years. A case manager and program director for Passageway indicated that, since September 9, 2003, the organization has been tasked with providing intensive and extensive treatment for the applicant. *Letter from* [REDACTED] dated January 26, 2010. They state that the applicant is receiving Social Security disability benefits and that he qualifies for Medicaid, yet they did not identify other existing forms of financial support for his treatment. *Id.* at 1.

The applicant had been in treatment with [REDACTED] for seven years as September 9, 2010. According to representations by [REDACTED] the organization ceased to have financial responsibility for the applicant's mental health services after seven years, and the applicant has not shown that another individual or organization is presently funding his treatment.

As the applicant has not completed Part III of Form CDC 4,422-1, and he has not otherwise shown that an individual or organization has taken responsibility for the expenses related to his necessary treatment, he has not complied with 8 C.F.R. § 212.7(b)(4)(ii)(B). It is noted that Form CDC 4,422-1 specifically states at the bottom of page 1 that "no further action will be taken on [the] waiver application until parts II and III are completed." For this reason, the present waiver application may not be approved.

Additionally, the AAO concurs with the field office director's determination that the applicant does not warrant a favorable exercise of discretion. The applicant has a history of serious mental illness that poses a significant threat to the safety of himself and others. As discussed above, the applicant has not established the continuity of funding for his treatment. As his history includes acts of life-threatening violence towards others, without adequate treatment his presence in the United States poses a significant risk to those around him. The record does not establish that the applicant's mental health has improved since his acts of violence in 2000, as in August 2008 he was observed as becoming increasingly paranoid and delusional. *Medical Psychotherapy & Medication Review Form* at 1.

The applicant has not presented positive discretionary factors that outweigh the risk of harm his presence poses in the United States. The applicant is married to a lawful permanent resident, yet the record indicates that he does not have contact with his wife. He has not shown that he has other family ties in the United States. The applicant does not have an employment history in United States since his acts of violence in 2000, and he has not shown that he possesses the capacity to support himself. As

noted by the field office director, although the applicant has been in United States for approximately 10 years, he has either been incarcerated or in a treatment facility, thus he has not shown that he has integrated into American society.

Accordingly, the negative factors in the present matter outweigh the positive factors.

In proceedings for application for waiver of grounds of inadmissibility under section 212(g) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the decision of the field office director will be affirmed, and the application will be denied.

ORDER: The decision of the field office director is affirmed, and the application is denied.