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



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

H,

DATE: JUL 06 2012

OFFICE: [REDACTED]

FILE: [REDACTED]

IN RE:

APPLICANT: [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 in accordance with the instructions on 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,

Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(1)(A)(iv) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(1)(A)(iv) for being a drug abuser. The applicant is the adopted son of a lawful permanent resident and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(g) of the Act, 8 U.S.C. § 1182(g), in order to join his lawful permanent resident parent in the United States.

The Field Office Director concluded that the applicant was inadmissible as a drug abuser, a ground of inadmissibility for which there is no waiver. *See Decision of Field Office Director* dated May 17, 2010. The waiver application was accordingly denied. *Id.*

On appeal, counsel for the applicant indicates that the Field Office Director failed to provide the specific provision of law which the applicant is inadmissible under. Counsel additionally asserts that the finding of drug abuse was incorrect in light of contradicting evidence. Counsel contends that the applicant is also not inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violating a law pertaining to a controlled substance.

The record includes, but is not limited to, evidence of birth, adoption, residence, and citizenship, other applications and petitions filed on behalf of the applicant, statements from the applicant and his parent, financial documents, and documentation of drug tests. The entire record was reviewed and considered in rendering a decision on the appeal.

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

In General: Any alien... (iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict, is inadmissible.

Section 212(a)(1)(B) of the Act provides:

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

Section 212(g) of the Act provides, in pertinent part:

Bond and Conditions for Admission for Permanent Residence of Mentally Retarded, Tubercular, and Mentally Ill but Cured Aliens.

The [Secretary] may waive the application of-

.....

- (1) Subsection (a)(1)(A)(i) in the case of any alien who –  
.....
- (2) Subsection (a)(1)(A)(ii) in the case of any alien –  
.....
- (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 Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

A panel physician found the applicant to have a Class A medical condition, addiction or abuse of specific substance without harmful behavior, based on his recent use of marijuana. *See DS-2053, Medical Examination for Immigrant or Refugee Applicant*, September 10, 2009. This finding renders the applicant inadmissible under section 212(a)(1)(A)(iv) of the Act for being a drug addict or abuser. Only medical examiners, such as panel physicians, civil surgeons, or other physicians designated by the Director of Health and Human Services, may make determinations of inadmissibility pursuant to section 212(a)(1)(A) of the Act. *See* 42 C.F.R. § 34. Neither the Act nor regulations provide USCIS with jurisdiction to overturn a finding of inadmissibility made by an authorized medical examiner under section 212(a)(1)(A) of the Act.

Furthermore, although the Act provides for waivers of inadmissibility of sections 212(a)(1)(A)(i), 212(a)(1)(A)(ii), and 212(a)(1)(A)(iii) of the Act, there is no waiver of inadmissibility for section 212(a)(1)(A)(iv) of the Act. As such, the AAO affirms that the applicant is mandatorily inadmissible under section 212(a)(1)(A)(iv) of the Act, for which no waiver is available.

In proceedings for a waiver of grounds of inadmissibility under section 212(g) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, because no waiver is available for his ground of inadmissibility, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.