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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: NOV 28 2014 Office: NEBRASKA SERVICE CENTER FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and 212(g) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(g)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. In addition, the applicant was found to be inadmissible to the United States under section 212(a)(1)(A) of the Act, 8 U.S.C. § 1182(a)(1)(A), for being a drug abuser or addict. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

The director determined that the applicant was statutorily inadmissible under section 212(a)(1)(A)(iv), as a drug abuser or addict, for which no waiver is available. The director further found that the applicant had failed to establish that he had overcome this ground of inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *Decision of the Director,* dated May 5, 2014.

On appeal, counsel submits the following: a brief; a copy of an email from the Consulate Information Unit in Ciudad Juarez, Mexico, dated May 17, 2011; a copy of the field office director's decision, dated February 8, 2013; and a copy of the director's decision, dated May 5, 2014. In addition to the above-referenced documents, counsel states in his June 19, 2014 letter to this office that he is enclosing a medical exam. A review of the materials submitted by counsel found no medical exam. Only medical examiners, such as panel physicians, civil surgeons, or other physicians designated by the Director of Health and Human Services, may reverse a finding of a Class A medical condition. The record does not indicate that a new determination (in accordance with regulations prescribed by the Secretary of Health and Human Services) has been made with respect to the applicant's inadmissibility pursuant to section 212(a)(1)(A) of the Act.

Section 212(a)(9) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .

> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien…

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:

> 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.

The record establishes that a panel physician found that the applicant had a Class A medical condition rendering him inadmissible under section 212(a)(1)(A)(iv) of the Act for being a drug addict or abuser. There is no indication in the record that this finding has been reversed. 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 Class A medical conditions. *See* 42 C.F.R. § 34. Neither the Act nor regulations provide USCIS with jurisdiction to overturn a finding made by an authorized medical examiner.

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, we concur with the director that the applicant is mandatorily inadmissible under section 212(a)(1)(A)(iv) of the Act, for which no waiver is available.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.