



**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **JUL 30 2015**

FILE #: [REDACTED]
APPLICATION RECEIPT #: [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

for A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the application. The matter 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 Yemen who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure an immigrant visa by fraud or willful misrepresentation. 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 (Qat user). The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident spouse and U.S. citizen or lawful permanent resident 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 noted that if the applicant remains inadmissible even if a waiver is granted, that remaining inadmissibility may itself support denial of the waiver application as a matter of discretion. Accordingly, the waiver application was denied as a matter of discretion.

On appeal, the applicant submits a letter, copies of immigration documents pertaining to his wife and children, and a document from a physician entitled "Visit Dates." In his letter, the applicant states that he did not make a material misrepresentation to procure an immigrant visa and claims that he did not go to a second panel physician and lie about his Qat use, as determined by the consular officer. The applicant states that he saw only one panel physical prior to his June 2013 visa interview and did not see a second panel physician until November 2014, when he was first informed that he should begin a Qat remission program. He states that he was never informed of the existence of the remission program until over a year after the refusal of his visa, and asserts that this resulted in wasted time and the denial of his waiver even though he had stopped chewing Qat after the visa refusal in July 2013. In addition, on June 30, 2015, this office received a letter from the applicant requesting that his case be expedited because of war and deteriorating conditions there.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:



(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an 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. If the applicant is found by a panel physician to be in sustained, full remission, he may be found to be admissible as he would no longer have a Class "A" mental disorder, but such a determination must be made by a panel physician based on clinical judgment. *See* 9 FAM 40.11 N11.1.

As the applicant is mandatorily inadmissible under section 212(a)(1)(A)(iv) of the Act, for which no waiver is available, no purpose would be served in addressing the applicant's inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act or his eligibility for a waiver under section 212(i) of the Act. The appeal of the denial of the waiver application is therefore dismissed as a matter of discretion as its approval would not result in the applicant's admissibility to the United States.

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.