



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 23 2015**

Office: HONOLULU

FILE: 

IN RE:

Applicant: 

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:

SELF REPRESENTED

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 Field Office Director, Honolulu, Hawaii. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the field office director for further proceedings consistent with this decision.

The applicant is a native and citizen of Tonga who was found to be inadmissible to the United States under section 212(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(1)(a)(iii), for having a physical or mental disorder with associated harmful behavior. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility to reside in the United States with her U.S. citizen spouse.

The field office director found that the applicant failed to submit all required information in response to a Request for Evidence generated following a review by the Centers for Disease Control and Prevention (CDC). The Application for Waiver of Grounds of Inadmissibility was denied accordingly. *See Decision of the Field Office Director* dated August 6, 2014.

On appeal the applicant submitted substance use lab results. The record contains evidence submitted in conjunction with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(1)(A)(iii) of the Act provides, 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)-

(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,

(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:

(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 Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

Regulations at 8 C.F.R. § 212.7(b) govern aliens with certain mental conditions who are eligible for immigrant visas but require a waiver under section 212(g)(3) of the Act for having 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. 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). "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 forwarded to the U.S. Public Health Service for review. *Id.* These regulations further provide:

(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 record reflects that on the Report of Medical Examination and Vaccination Record (Form I-693) submitted with the applicant's adjustment of status application the civil surgeon indicated that she has a history of physical/mental disorder with associated harmful behavior likely to recur, a Class A medical condition. The record shows that the medical examination form and supporting documentation for the applicant was provided to the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control (CDC), on January 13, 2014. The CDC Chief of Immigrant, Refugee and Migrant Health Branch, Division of Global Migration and Quarantine, National Center for Emerging and Zoonotic Infectious Diseases, then deferred

establishing a final diagnosis and classification for the applicant pending additional information. The CDC request, dated March 21, 2014, asked for mental health notes and all substance use lab results from “the last year.” The field office director issued a Request for Evidence (RFE) to the applicant on May 14, 2014, providing her with 84 days, or until August 15, 2014, to fully comply with the request. The record shows that on July 17, 2014, the applicant forwarded all information requested except that she submitted substance use lab results from 2012 rather than 2013 and 2014 as indicated on the RFE. The lab results that the applicant submitted with the Form I-290B are dated August 24, 2014.

Based on the findings of the civil surgeon, as indicated on the Form I-693, that the applicant has a Class A medical condition, the field office director determined the applicant to be inadmissible under section 212(a)(1)(A)(iii) of the Act. A waiver of inadmissibility based on a determination that the applicant poses a threat due to a physical or mental disorder may be approved only after consultation with the secretary of Health and Human Services (HHS) and under such condition as the secretary of DHS may prescribe by regulation. This type of waiver may be approved only after consultation with the secretary of HHS, which requires involvement of the CDC.

The waiver application was denied because the applicant submitted substance use lab results for 2012 rather than for the past year as requested by the CDC. As the applicant has now submitted the requested documentation, we remand the case to the field office director to forward the documentation to the CDC for further review and final diagnosis and classification.

ORDER: The case is remanded to the field office director for further action and consideration as indicated above.