



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF H-J-L-C-

DATE: NOV. 12, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) and § 212(g) of the Act, 8 U.S.C. § 1182(g). The Director, Nebraska Service Center, denied the application. We dismissed a subsequent appeal, and the matter is now before us on motion to reopen. The motion to reopen will be denied.

In a decision dated May 5, 2014, the Director determined that the Applicant was statutorily inadmissible under section 212(a)(1)(A)(iv) of the Act 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 Form I-601 was denied accordingly.

On appeal, we noted that a panel physician had 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. We further found that there was no indication in the record that this finding had been reversed. We further noted that 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, and USCIS does not have jurisdiction to overturn a finding made by an authorized medical examiner. *See* 42 C.F.R. § 34. Furthermore, we stated that 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 concurred with the Director that the Applicant was statutorily inadmissible under section 212(a)(1)(A)(iv) of the Act, for which no waiver was available.

With the instant motion to reopen, the Applicant submitted a brief and a medical examination dated January 7, 2015, for our review. The entire record was reviewed and considered in rendering this decision.

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 Applicant submitted medical documentation from January 2015 in support of the instant motion. As explained above, this office does not have jurisdiction to reverse an inadmissibility finding pursuant to section 212(a)(1)(A)(iv) of the Act as 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. Neither the Act nor regulations provide USCIS jurisdiction to overturn a finding of inadmissibility made by an authorized medical examiner under section 212(a)(1)(A) of the Act.<sup>1</sup>

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, on motion we again concur with the Director that the Applicant is statutorily 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 motion to reopen is denied.

Cite as *Matter of H-J-L-C-*, ID# 13406 (AAO Nov. 12, 2015)

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<sup>1</sup> The Foreign Affairs Manual provides that for cases previously refused under section 212(a)(1)(A)(iv) due to a Class A medical condition, if the last refusal was more than one years ago, then the applicant must reapply for a visa, complete a new medical examination with a panel physician and pay all applicable fees. 9 FAM 40.11 N11.1.