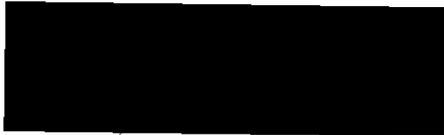


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY



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



H2

DATE: OCT 28 2011 OFFICE: CIUDAD JUAREZ

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:

SELF-REPRESENTED

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who is currently residing in Mexico. He was found to be inadmissible to the United States under section 212(a)(1)(A)(iii)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(1)(A)(iii)(II) for having 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. The applicant is the spouse of a U.S. Citizen 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 United States citizen spouse in the United States.

The Field Office Director concluded the applicant failed to sign an acknowledgement of the conditions prescribed by the Centers for Disease Control and to arrange for the applicant's treatment as required and denied the application accordingly. *See Decision of Field Office Director* dated February 24, 2009.

On appeal, the applicant submits updated forms, stating: "Enclosed you will find the forms requested by the American Consulate General on April 15, 2008 fully completed by the County of Riverside Department of Mental Health, Substance Abuse Program and signed by [REDACTED] MFT." *Form I-290B, Notice of Appeal or Motion*, March 2, 2009.

The record includes, but is not limited to, the documents listed above, Department of Health and Human Services forms in support of application for waiver of inadmissibility, medical and psychological evaluation forms, a chest x-ray and classification worksheet, a vaccination documentation worksheet, birth and marriage certificates, a statement from the applicant's spouse, and a scholarship award certificate for the applicant's spouse. 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-... (iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the [Secretary]) –

....

(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... 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-

....

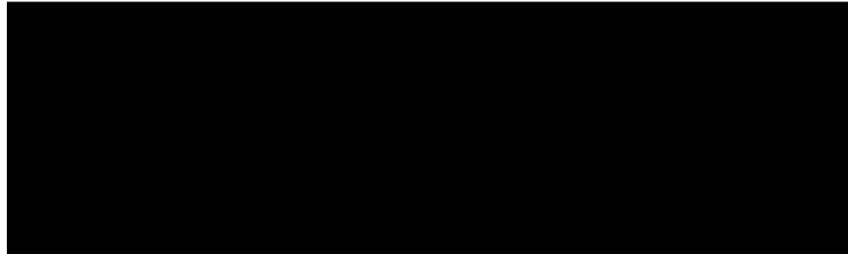
- (1) Subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the [Secretary], in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

The record reflects the applicant was arrested in August 2005 and November 2006 for street fighting in Michoacan, Mexico. *Psychological report*, December 20, 2007. In both instances, the applicant stated he was released a few hours after arrest. *Id.* For the August 2005 arrest, the applicant claims he was given five months of probation, and for the November 2006 arrest, the applicant states he was given three months of probation. *Id.* The record further reflects the applicant had been drinking alcohol before the November 2006 incident leading up to his arrest, saw that his friends had begun fighting and decided to join them. *Id.* Moreover, the report indicates the applicant began drinking alcohol at age 16, “drinking fifteen beers per weekend,” and has used cannabis and cocaine once. *Psychological report*, December 20, 2007. The report concludes the applicant “has features of alcohol abuse; this conduct is not in remission. He is in denial regarding his alcohol abuse.” The applicant was examined by a certified civil surgeon on December 20, 2007, who found the applicant has 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. *Medical history and physical examination worksheet*, December 20, 2007. The Field Office Director therefore found the applicant inadmissible pursuant to section 212(a)(1)(A)(iii)(II) of the Act, and the AAO affirms the Field Office Director’s finding.

The relevant regulation for a waiver of inadmissibility of subsection (a)(1)(A)(iii)(II) is 8 C.F.R. § 212.7. The applicant has completed every step of the waiver process except the last step set forth in 8 C.F.R. §212.7(b)(5). In order to finish the process, the applicant or his spouse must complete Part III of the Form, Statements in Support of Application for Waiver of Inadmissibility according to the instructions, which state:

“Applicant or sponsoring family member: (a) **completes Part III on all 3 copies returned by the facility or specialist**; (b) Keeps one copy; (c) sends 2 copies to the United States Public Health Service official **whose name and address are given in Part I, item (f), below.**”

Part III of the application requires the applicant or his spouse to sign the application affirming that the applicant will comply with the instructions given to him. After signing all three copies, two of the copies must be sent to:



for final approval. This has not yet been done by the applicant. The AAO is returning the original Forms to the applicant's spouse so that she can complete the process.

In this case, the record does not contain sufficient evidence to show that the applicant has complied with the requirements of Section 212(g) of the Act and 8 C.F.R. § 212.7 for a waiver of medical inadmissibility. In proceedings for application for 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, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Enclosure: Statements in Support of Application for Waiver of Inadmissibility.