



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

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

In Re: 18488044

Date: FEB. 28, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), for unlawful presence for a period of one year or more and under section 212(g), 8 U.S.C. § 1182(g), for having a physical or mental disorder that may pose a threat to others, including alcohol or drug addiction.

The Director of the Nebraska Service Center denied the waiver, concluding that the Applicant's waiver application does not merit approval because the Applicant did not renew his medical exam to overcome his inadmissibility on the basis of section 212(a)(1)(A)(iii) of the Act for alcohol addiction.¹

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Any noncitizen who is determined to have a physical or mental disorder that may pose, or has posed, a threat to the property, safety, or welfare of others, is inadmissible. Section 212(a)(1)(A)(iii) of the Act. This ground of inadmissibility is subject to a discretionary waiver by the Attorney General.

To merit a waiver under section 212(g) of the Act, an applicant must submit the waiver application along with a statement affirming that arrangements have been made to provide a medical report containing the applicant's complete medical history, and findings as to the applicant's current physical and mental condition with a report of a psychiatric examination. 8 C.F.R. § 212.7(b)(2). The report should specify, based on a reasonable degree of medical certainty, the possibility that the harmful behavior is likely to recur or that other harmful behavior associated with the disorder is likely to occur. A recommendation should also be submitted concerning treatment available in the United States that is reasonably expected

¹ The Director also noted that the Applicant's unlawful residence in the United States for a period exceeding one year makes him inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). However, the Director declined to address the merits of the waiver under section 212(a)(9)(B)(v) of the Act given the Applicant's continued inadmissibility under section 212(a)(1)(A)(iii) of the Act.

to significantly reduce the likelihood that the physical or mental disorder will result in harmful behavior in the future.² See Form I-601 Instructions.

II. ANALYSIS

The Director denied the waiver application, stating that the Applicant had not attended a new medical appointment on or after December 25, 2016, as required to continue with the processing of his visa application before the U.S. consulate. The Director stated that the Applicant did not schedule an appointment for a follow-up interview and to renew his medical exam, as instructed by the consulate in March 2019.³ The Director further stated, “As of this date you still have not renewed your medical exam to overcome your 212(a)(1)(A)(iii) inadmissibility, therefore USCIS cannot approve your waiver application.”

On appeal, the Applicant argues that he did have a renewed medical exam performed after December 25, 2016, and provided it to USCIS with his Form I-601 application in 2017. The Applicant further states that he notified the consulate in March 2020 that he is in the process of preparing new documents to schedule a new consular interview, but that the U.S. Consulates in Mexico have been closed for visa services since March 18, 2020, due to the COVID-19 pandemic.

With his waiver application, the Applicant submitted a statement acknowledging that he was arrested for an alcohol-related offense in [REDACTED] 2015, but claimed that he was in a sustained, full remission for at least one year since his arrest. He cited 9 FAM § 302.2-7(B)(2)(b), which defines “sustained, full remission” as “a period of at least 12 months during which no associated substance use or mental disorder or associated harmful behavior has occurred,” and states that “[i]n accordance with this timeline” he had obtained a second medical exam from a panel physician on January 18, 2017, more than a year after his arrest.

In arguing that he was in a sustained, full remission, the Applicant sought to establish that he was no longer inadmissible for a Class A mental health condition, but this claim cannot be considered by USCIS in connection with a Form I-601 application for a waiver of this ground of inadmissibility. A waiver under section 212(g) is required when an Applicant is inadmissible for a Class A mental health condition. As explained above, an applicant for such a waiver must submit specific documentation, including a detailed medical report and evidence that arrangements have been made for evaluation and necessary treatment at a medical facility or specialist in the United States. The Applicant did not submit this documentation with the waiver application or on appeal, but instead submitted a new Form DS-2054, Medical Examination for Immigrant or Refugee Applicant, seeking to establish that he did

² See also 8 C.F.R. § 212.7(b)(2)(ii), which provides that subsequent to review of the initial medical report by U.S. Public Health Service (USPHS), the applicant must submit a statement from a medical facility affirming that the facility or specialist agrees to evaluate the applicant upon their admission to the United States and prepare a medical report with findings of the evaluation and deliver it to the Centers for Disease Control within 30 days after the applicant’s arrival. In addition, the applicant must submit an assurance of their intent to comply with travel requirements, report to the facility or specialist for an evaluation upon being admitted to the United States, submit to any further examinations or treatment that may be required, and pay all necessary expenses. 8 C.F.R. § 212.7(b)(3).

³ In a March 2019 electronic communication, the U.S. Consulate in Mexico informed the Applicant that if at least one year had passed since his last interview, he would need to renew his medical exam, photographs, and fees.

not require a waiver under section 212(g) of the Act because was in remission and is therefore no longer inadmissible.⁴

We cannot make a determination of whether the Applicant is in remission and thus no longer inadmissible under section 212(a)(1)(A)(iii) for having a Class A mental disorder. The Applicant is residing overseas and applying for an immigrant visa, and the diagnoses of substance-related disorders are to be made in accordance with existing medical standards as determined by the current edition of the DSM. To establish any substance-related disorder diagnosis, the examining physician must document the pattern or use of the substance and behavioral, physical, and psychological effects associated with the use or cessation of use of that substance. 9 FAM 302.2-7(B)(3)(a)(1).

The Applicant has not demonstrated that he complied with the requirements for a waiver under section 212(g) of the Act to overcome his inadmissibility for alcohol addiction, a Class A medical condition. As such, no purpose would be served in discussing whether he merits a waiver under section 212(a)(9)(B)(v) of the Act for his unlawful presence.

ORDER: The appeal is dismissed.

⁴ If an applicant presently is or has engaged in harmful behavior associated with a physical or mental disorder, the panel physician must evaluate, based on clinical judgment, whether the harmful behavior is likely to recur.