



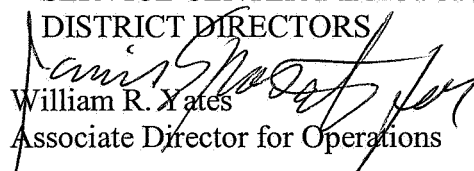
Department of Homeland Security
U.S. Citizenship and Immigration Services

425 I Street NW
Washington, DC 20536

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MEMORANDUM FOR REGIONAL DIRECTORS
SERVICE CENTER DIRECTORS
DISTRICT DIRECTORS

FROM:


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Associate Director for Operations



SUBJECT: Requesting Medical Re-examination: Aliens Involved in Significant Alcohol-Related Driving Incidents and Similar Scenarios

I. Purpose

This memorandum provides policy guidance for determining inadmissibility under the health-related grounds of section 212(a)(1) of the Immigration and Nationality Act (Act) in cases where an applicant for an immigration benefit has a significant record of alcohol-related driving incidents. According to data provided by the Centers for Disease Control and Prevention (CDC), alcohol-impaired driving is a significant public health and safety issue resulting in over 17,000 deaths annually, over 500,000 injuries, and over \$51 billion in property damages. This memorandum reiterates the authority of field offices to require that certain applicants for immigration benefits with a history of alcohol-related driving incidents be re-examined by a civil surgeon to ensure that they are not inadmissible on health-related grounds.

II. Authority

In order to be eligible for many immigration benefits, an alien must be admissible to the United States. Applicants for immigrant visas, adjustment of status and certain nonimmigrant visa classifications are required to submit to a medical examination to establish that they are not inadmissible on health-related grounds set forth in section 212(a)(1) of the Act. Section 212(a)(1)(A)(iii) of the Act states that an alien who is determined, according to regulations prescribed by the Secretary of Health and Human Services (HHS), to have a mental disorder and associated behavior that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others is inadmissible. Under interpretations prescribed by the Secretary HHS, alcohol abuse/dependence resulting in alcohol-impaired driving may serve as the basis for a determination that an alien has mental disorder with associated harmful behavior which in turn may be a basis for a finding of inadmissibility within the meaning of section 212(a)(1)(A)(iii) of the Act.

Memorandum for Regional Directors, et. al.

Subject: Requesting Medical Re-examination: Aliens Involved in Significant Alcohol-Related Driving Incidents and Similar Scenarios

III. Background: Drunk Driving Arrests or Convictions and 212(a)(1) Inadmissibility

In the course of adjudicating benefit applications, adjudications officers frequently encounter criminal histories that include arrests and/or convictions for alcohol-related driving incidents, such as DUI (driving under the influence) and DWI (driving while intoxicated). These histories may or may not rise to the level of a criminal ground of inadmissibility under section 212(a)(2) of the Act. However, a record of criminal arrests and/or convictions for alcohol-related driving incidents may constitute prima facie evidence of health-related inadmissibility under section 212(a)(1)(A)(iii) of the Act, as a physical or mental disorder with associated harmful behavior.

DHS officers determine that a health-related ground of inadmissibility exists based on the findings of a civil surgeon's medical examination. Civil surgeons are guided in their examinations by the *Technical Instructions for the Medical Examination of Aliens in the United States* (Technical Instructions) published by the Centers for Disease Control and Prevention. These instructions include directives to civil surgeons to initiate queries to ascertain the mental status of the applicant and to detect the presence of any mental disorders. The examination includes queries into the use of alcohol and other psychoactive substances. Alcohol abuse and alcohol dependence are medically classifiable mental disorders. Operating a motor vehicle under the influence of alcohol is clearly an associated harmful behavior that poses a threat to the property, safety, or welfare of the alien or others. Where a civil surgeon's mental status evaluation diagnoses the presence of alcohol abuse or alcohol dependence, and where there is evidence of harmful behavior associated with the disorder, a Class A medical condition is certified on Form I-693, Report of Medical Examination of Alien Seeking Adjustment of Status. DHS officers then determine that the alien is inadmissible, based on the Class A condition certified on the Form I-693 medical report.

Some applicants may fail to report, or may underreport, alcohol-related driving incidents in response to the civil surgeon's queries. Where these incidents resulted in an arrest, they may be subsequently revealed in the criminal history record resulting from a routine fingerprint check. Consequently, a criminal record printout revealing a significant history of alcohol-related driving arrests may conflict with the medical examination report that indicates no alcohol-related driving incidents were reported to or evaluated by the civil surgeon. In such an instance, DHS may require the applicant to be re-examined. The re-examination would be limited to a mental status evaluation specifically considering the record of alcohol-related driving incidents.

IV. Procedure: When to require medical re-examination

Accordingly, when the criminal record of an applicant for benefits under the Act reveals a significant history of alcohol-related driving arrests and/or convictions, and the

Memorandum for Regional Directors, et. al.

Subject: Requesting Medical Re-examination: Aliens Involved in Significant Alcohol-Related Driving Incidents and Similar Scenarios

Form I-693 medical report does not reflect that the alcohol-related driving incidents were considered by the civil surgeon, the applicant shall be required to undergo a mental status re-examination by a civil surgeon specifically addressing the incidents revealed in the criminal record. The civil surgeon, in turn, may refer the applicant for further evaluation to a psychiatrist or to a specialist in substance-abuse disorders as provided for under CDC's Technical Instructions. The civil surgeon will determine whether a Class A medical condition exists and amend the Form I-693 medical report accordingly.

The determination of a Class A medical condition is wholly dependent on the medical diagnosis of a designated civil surgeon. **Only applicants with a significant criminal record of alcohol-related driving incidents that were not considered by the civil surgeon during the original medical examination should be referred for re-examination.** The actual criminal charges for alcohol-related driving incidents vary among the different states. For the purpose of this policy guidance, a significant criminal record of alcohol-related driving incidents includes:

- One or more arrest/conviction for alcohol-related driving (DUI/DWI) while the driver's license was suspended, revoked or restricted at the time of the arrest due to a previous alcohol-related driving incident(s).
- One or more arrest/conviction for alcohol-related driving where personal injury or death resulted from the incident(s).
- One or more conviction for alcohol-related driving where the conviction was a felony in the jurisdiction in which it occurred or where a sentence of incarceration was actually imposed.
- Two or more arrests/convictions for alcohol-related driving within the preceding two years.
- Three or more arrests/convictions for alcohol-related driving where one arrest or conviction was within the preceding two years.

On completion of the re-examination, if a Class A condition is certified by the civil surgeon, DHS will determine that the alien is inadmissible. If no Class A condition is certified by the civil surgeon, DHS may not determine that the alien is inadmissible under section 212(a)(1)(A)(iii)(I) or (II) of the Act. In exceptional cases, DHS may seek review of the civil surgeon's determination from the U.S. Public Health Service. If the alien is inadmissible, he or she may file an application for waiver of inadmissibility on Form I-601 under section 212(g)(3) of the Act. Under 8 CFR 212.7(b), the DHS, in consultation with the public health officials of the CDC, may place terms, conditions and controls on the waiver, which may include the posting of a bond, as may be deemed prudent.

Memorandum for Regional Directors, et. al.

Subject: Requesting Medical Re-examination: Aliens Involved in Significant Alcohol-Related Driving Incidents and Similar Scenarios

V. Similar Scenarios

The above analysis and procedure applies to any similar scenario where the record of proceeding contains evidence that may indicate inadmissibility due to a mental disorder with associated harmful behavior that was not considered by the civil surgeon in the original medical examination. Such evidence includes, but is not limited to: a prior finding of inadmissibility due to a mental disorder; a history of institutionalization for a mental disorder; a criminal history other than drunk driving arrests, such as assaults and domestic violence, where alcohol, or other psychoactive substance, was a contributing factor; or other criminal arrests where there is a reasonable possibility of a mental disorder as a contributing factor. Accordingly, where the record of proceeding available to a DHS officer contains significant evidence suggestive of a mental disorder, and the Form I-693 medical report does not reflect that the evidence was considered by the civil surgeon, the applicant shall be required to undergo a mental status re-examination by a civil surgeon specifically addressing the adverse evidence that may not have been revealed to the original civil surgeon.

VI. For Further Information

Questions regarding the above policy should be directed via DHS electronic mail, to Mark Rouse, Office of Program and Regulatory Development.