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

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[redacted]

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FILE: [redacted] Office: CHICAGO, ILLINOIS Date: JUL 06 2005

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of burglary, which is a crime involving moral turpitude. The applicant is the spouse of a U.S. citizen and father to four U.S. citizen children. He seeks a waiver of inadmissibility pursuant to § 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his wife and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability. On appeal, the applicant contends that since his conviction was expunged, it should not count as a conviction; hence, he should not be considered in admissible. The AAO disagrees with this contention; however, since over fifteen years have passed since the date of the applicant's criminal activity, he is eligible for a waiver under § 212(h)(1)(A) of the Act.

The record reflects that on May 25, 1989, the applicant was arrested. He was convicted of burglary on July 5, 1989, and he was sentenced to one year of probation.

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

On appeal, the applicant submits a Cook County Circuit Court record showing that his conviction was expunged on November 23, 1999. He asserts that he is not inadmissible, because the criminal record was expunged. The AAO notes that § 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" for immigration purposes as:

> A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –
>
> > (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
> >
> > (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

An expungement does not remove a judgment of guilt from the definition of conviction for immigration purposes; therefore, the applicant is still considered to have been convicted of burglary in 1989.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The applicant was convicted of the crime of burlary in July 1989 based on actions taken by the applicant in May 1989. Therefore, the crime involving moral turpitude for which the applicant was found inadmissible occurred more than fifteen years prior to this adjudication.

The record contains no information which would lead to the conclusion that the applicant's admission to the United States would be contrary to our national welfare, safety, or security. Moreover, the evidence on the record indicates that the applicant has been rehabilitated. He has not been charged with any additional crimes since his conviction in 1989. The applicant has been married since 1995, and he has four U.S. citizen children. The record reflects that the applicant is a homeowner who has been living in the same home for many years and that he has been continuously employed. The only unfavorable factor presented in the application is the applicant's conviction for burglary, which is, of course, not taken lightly. Nevertheless, the totality of the evidence weighs more heavily in the applicant's favor, and it is determined that the applicant meets the requirements for waiver of his grounds of inadmissibility under § 212(h)(1)(A) of the Act.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. The applicant has established that the favorable factors in his application outweigh the unfavorable factors. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.