U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO Date: APR 27 2006

IN RE: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 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 a crime involving moral turpitude. The applicant is the spouse of a U.S. citizen and child of U.S. citizen parents. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse and parents.

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 (Form I-601) accordingly. *Decision of the District Director*, dated April 9, 2003.

The record reflects that, on March 14, 1985, the applicant was convicted of felony burglary in violation of paragraph 720, chapter 5/19-1(a) of the Illinois Compiled Statutes (ILCS), formerly Chapter 38, paragraph 19-1-A. Paragraph 720, chapter 5/19-1(a) of the ILCS states that:

> Burglary.
> (a) A person commits burglary when without authority he knowingly enters or without authority remains within a building, housetrailer, watercraft, aircraft, motor vehicle as defined in the Illinois Vehicle Code, railroad car, or any part thereof, with intent to commit therein a felony or theft . . .
> (b)Sentence.
> Burglary is a Class 2 felony. A burglary committed in a school or place of worship is a Class 1 felony.

The applicant was sentenced to 18 months of probation.

On June 18, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an I-130 Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. The record shows that the applicant appeared at CIS' Chicago District Office on March 25, 2002. The applicant admitted that he had been convicted of felony burglary.

On June 18, 2002, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On April 9, 2003, the district director issued a notice of denial of the application because the applicant was convicted of a crime involving moral turpitude and had failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, counsel asserts that the district director erred in finding that the applicant's wife and parents, as well as the applicant's wife's parents, would not experience extreme hardship if the applicant were to be removed to Mexico. *See Applicant's Brief* dated May 30, 2003. In support of the appeal, counsel submitted the above-referenced brief, ownership documents for a house and vehicle the applicant and his spouse recently bought, and a letter from the applicant's employer. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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 district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's admission to and conviction for felony burglary, a crime involving moral turpitude. Counsel does not contest the district director's determination of inadmissibility.

The record reflects that, on October 1, 1992, the applicant was also convicted of criminal damage to property and sentenced to six months probation. On June 16, 1997, the applicant received supervised probation for driving under the influence, which was terminated prior to 2002. On March 20, 1999, the applicant married [redacted] who is a U.S. citizen by birth. The applicant's father and mother are U.S. citizens

who reside in Arizona. The applicant's wife's parents are U.S. citizens, to whom the applicant and his wife provide financial support and physical assistance. The record reflects further that the applicant pays federal taxes.

The record reflects that the applicant applied for adjustment of status on June 18, 1999. An application for admission or adjustment is a "continuing" application adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). No final decision has been made on the applicant's Form I-485, so the applicant, is still seeking admission by virtue of adjustment of status. Therefore, the crime involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's application for adjustment of status.

The AAO finds that the district director erred in basing his decision on section 212(h)(1)(B) of the Act and failed to consider the eligibility of the applicant for waiver under section 212(h)(1)(A). The record reflects that the applicant has not been convicted of any crimes involving moral turpitude since his conviction for burglary in 1985. The record establishes that, since 1997, the applicant does not possess a criminal record in the United States and the record does not establish that the admission of the applicant to the United States would be "contrary to the national welfare, safety, or security of the United States."

The record reflects that the applicant meets the requirements for a waiver of his grounds of inadmissibility under section 212(h)(1)(A) of the Act. Further, the AAO notes that, even though the applicant's family would not suffer *extreme* hardship, they would suffer emotional and financial hardship as a result of their separation from the applicant. Until recently, the applicant was the main provider for the family and continues to contribute approximately 46%, or $31,000 to the household income. The applicant not only provides physical assistance to [redacted] parents, but the applicant's contributions to the household allow [redacted] provide financial assistance to her parents, who are both U.S. citizens. The applicant and [redacted] have been married for over seven years and it would be an emotional hardship for them to be separated if the applicant were removed from the United States. Additionally, it would be a hardship for [redacted] to accompany the applicant to Mexico because she would be unable to provide care and financial assistance to her parents and she would face adjustment to a lower standard of living, separation from friends and family, a new culture and language

The unfavorable factors presented in the application are the applicant's conviction for burglary in 1985, criminal damage to property in 1992 and terminated supervision for driving under the influence in 1997. The AAO notes that the applicant has not been charged with a crime since 1997 and the applicant's crime involving moral turpitude occurred more than 15 years ago, demonstrating the applicant's rehabilitation. The applicant has a U.S. citizen spouse to whom he has been married over seven years, as evidenced by a letter from his employer, he has been steadily employed and has been an exemplary employee for over 15 years, he has paid taxes during this employment, he is a homeowner and is settled in the community and provides emotional and financial support to family members in the United States.

The applicant has established that the favorable factors in his application outweigh the unfavorable factors. The district director's denial of the Form I-601 was thus improper.

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. Accordingly, the appeal will be sustained.

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