



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

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

MATTER OF G-C-B-

DATE: NOV. 25, 2015

APPEAL OF OKLAHOMA CITY FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, Oklahoma City Field Office, denied the application. The matter is now before us 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 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 beneficiary of an approved Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, and seeks a waiver of inadmissibility to remain in the United States.

The Director denied the application as a matter of discretion because the Applicant has been convicted of a crime involving moral turpitude.<sup>1</sup> *Decision of the Field Office Director*, January 31, 2015.

On appeal the Applicant asserts that USCIS erred in denying his waiver application as it did not accurately review the record and did not weigh positive and negative factors. With the appeal the Applicant submits a brief. The entire record was reviewed and considered in rendering this decision.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)

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<sup>1</sup> The decision cites Section 212(i) of the Act, which provides a waiver for fraud or misrepresentation, but there is no finding or indication on the record that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured or attempted to procure admission to the United States or an immigration benefit through fraud or misrepresentation. Rather, the decision only determined that the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude and indicates that he seeks a waiver because of inadmissibility under section 212(a)(9)(B)(i) for unlawful presence and under section 212(a)(9)(C)(i) for a subsequent entry without inspection.

We note that on Form I-601, submitted on July 22, 2014, the Applicant indicated that he is inadmissible for having been unlawfully present in the United States and for having been previously removed from the United States. The record reflects that the Applicant entered the United States on February 2, 1994, without inspection, was issued an order of deportation by an immigration judge on March 28, 1996, was removed on March 30, 1996, and returned to the United States without inspection in May 1996. However, these events occurred prior to the April 1, 1997, effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) that established inadmissibility under sections 212(a)(9)(B)(i) of the Act for having accrued unlawful presence and under section 212(a)(9)(C)(i) of the Act for being unlawfully present after previous immigration violations. As the Applicant's reentry after removal occurred before April 1, 1997, and he has not subsequently departed the United States after accruing one year or more of unlawful presence, he is not inadmissible under section 212(a)(9)(B)(i)(II) or section 212(a)(9)(C)(i) of the Act.<sup>2</sup> In a statement on the Form I-601, the Applicant also indicated that he has been convicted of a crime, and he submitted copies of his 1995 conviction record for burglary of automobile with the Form I-601, which was filed concurrently with the Form I-485, Application to Adjust Status.

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

(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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present.

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<sup>2</sup> We note that the Applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act for his 1996 deportation, and he requires permission to reapply for admission under section 212(a)(9)(A)(iii). His Form I-212, Application for Permission to Apply for Admission After Deportation or Removal, was denied on March 14, 2015, based on the denial of the Form I-601, but the Applicant has not appealed that decision.

(b)(6)

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However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

The record reflects that on [REDACTED], 1995, in the District Court for the State of Oklahoma, [REDACTED] under another name the Applicant pled guilty to burglary of automobile in violation of Oklahoma statute 21 § 1435, for which he was sentenced to two years imprisonment and fined \$860. At the time of the Applicant's conviction, the statute stated:

21 Okl.St. Ann. § 1435

§ 1435. Burglary in second degree—Acts constituting

Every person who breaks and enters any building or any part of any building, room, booth, tent, railroad car, automobile, truck, trailer, vessel or other structure or erection, in which any property is kept, or breaks into or forcibly opens, any coin-operated or vending machine or device with intent to steal any property therein or to commit any felony, is guilty of burglary in the second degree.

Burglary is considered to be a crime involving moral turpitude only when it is established that the offense was committed with the intent to commit a crime involving moral turpitude. *Matter of M-*, 2 I&N Dec. 721, 723 (BIA 1946). In the present case, burglary under this section of the Oklahoma statute contains some elements that do not involve moral turpitude, intent to steal any property or to commit any felony. Because the statute is divisible in this manner, the offense is not categorically a crime involving moral turpitude and a modified categorical approach is necessary to determine whether the Applicant's burglary of automobile conviction is a crime involving moral turpitude. Here, court documents in the record reflect that the Applicant was convicted of attempted burglary of an automobile with intent to commit theft. Burglary with intent to commit theft has been found to be a crime involving moral turpitude. *See Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982).

Section 212(h)(1)(A) of the Act provides that certain grounds of inadmissibility under section 212(a)(2)(A)(i)(I)-(II), (B), and (E) of the Act may be waived in the case of an alien who demonstrates to the satisfaction of the Attorney General that:

- (A)(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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.

(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 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; or.

(C) the alien is a VAWA self-petitioner.

In the present matter, the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. While the Applicant's conviction is significant, the record does not show that he has engaged in violent behavior or that he has engaged in criminal activity following his conduct of 1995 which resulted in a criminal conviction 20 years ago. The record does not reflect that admitting the Applicant would be contrary to the national welfare, safety, or security of the United States.

The record shows that applicant last entered the United States in May 1996. On October 16, 2012, the Applicant submitted a Form I-360 as the self-petitioning spouse of an abusive U.S. citizen, which was approved on March 5, 2014. In affidavits in support of his waiver application, the Applicant restates assertions made in support of his Form I-360 that he returned to the United States following his removal because of threats made by his son's mother, whom he later married, and that he remained with her despite abuse because they had three children together. The record also contains letters of support for the Applicant from friends and his son that attest to his character.

We find that the Applicant has shown by a preponderance of the evidence that he has been rehabilitated. The record does not indicate that the Applicant has a propensity to engage in further criminal activity, and in statements he acknowledges his criminal conviction, although he asserts that he had mistakenly entered the wrong car after which he pled guilty to burglary of an automobile. Accordingly, the Applicant has shown that he meets the requirement of section 212(h)(1)(A)(iii) of the Act. Based on the foregoing, the Applicant has shown that he is eligible for consideration for a waiver under section 212(h)(1)(A) of the Act.

In determining whether the Applicant warrants a favorable exercise of discretion under section 212(h) of the Act, the Secretary must weigh positive and negative factors in the present case. The negative factors in this case are the Applicant's conviction for a crime involving moral turpitude, his entry to the United States on two occasions without inspection, and his unlawful presence in the United States. The positive factors in this case include the Applicant's long-time residence in the United States, his lack of criminal record in nearly 20 years, approval of his Form I-360 self-petition as an abused spouse, letters of support, and evidence through a news account that he rescued someone from a fire, risking his own safety. While the Applicant's criminal conviction is serious, the positive factors in this case outweigh the negative factors.<sup>3</sup>

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<sup>3</sup> The decision of the Director refers to a 2012 cover letter submitted with the Form I-360, in which the Applicant's attorney stated he had no criminal record. The decision states that this leads to an inference that the Applicant was not

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In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

**ORDER:** The appeal is sustained.

Cite as *Matter of G-C-B-*, ID# 13665 (AAO Nov. 25, 2015)

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truthful with his attorney about the matter and finds that he has a pattern of being deceptive. We note, however, that in the Applicant's statement submitted with the Form I-360, as well as on his Form I-601 and Form I-485, the Applicant disclosed his arrest and conviction for burglary.