U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-T-

DATE: SEPT. 2, 2015

APPEAL OF OAKLAND PARK FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Haiti, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (INA, or the Act) § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, Oakland Park Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed as unnecessary.

The Applicant 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-130, Petition for Alien Relative (Form I-130).[1] The Director found that the Applicant had failed to establish that his qualifying relative would suffer extreme hardship as a result of his inadmissibility. The waiver application was denied accordingly. *Decision of the Field Office Director*, dated April 15, 2015.

On appeal the Applicant asserts that he has not been convicted of a crime involving moral turpitude and a waiver of inadmissibility is not necessary. With the appeal the Applicant submits a statement. The entire record was reviewed and considered in rendering this decision.

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 –
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> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

[1] The record reflects that the Applicant entered the United States without inspection on January 28, 2002, and filed a Form I-589, Application for Asylum on April 24, 2003. The Applicant's case was referred to the Executive Office of Immigration Review (EOIR) with a Notice to Appear issued on December 1, 2004. The Applicant was ordered removed from the United States on December 8, 2006, with an appeal of that order denied on May 21, 2007. The Applicant was granted Temporary Protected Status (TPS) on May 26, 2010, and his TPS was withdrawn on July 9, 2015, due to his felony conviction.

> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-
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> > (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or
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> > (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (the 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....
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> 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. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record reflects that on [redacted] 2013, the Applicant was convicted in the 12th Judicial Circuit, in and for [redacted], Florida, of Felony Battery, Second Degree, under Florida statute 784.03(2), for which he was fined and sentenced to one year of community control followed by four years of probation.[2]

In assessing whether a conviction is a crime involving moral turpitude, we must first "determine what law, or portion of law, was violated." *Matter of Esfandiary*, 16 I&N Dec. 659, 660 (BIA 1979). We begin with a categorical inquiry, considering the "inherent nature of the crime as defined

[2] The record indicates that after being initially charged with lewd or lascivious battery in violation of Florida Statute 800.04(4)(a), the applicant was convicted of battery under Florida Statute 784.03(2).

by statute and interpreted by the courts," not the underlying facts of the criminal offense. *Matter of Short,* 20 I&N Dec. 136, 137 (BIA 1989); *see also Fajardo v. Attorney General,* 659 F.3d 1301, 1305 (11th Cir. 2011) (quoting Taylor v. United States, 495 U.S. 575, 600 (1990)). This categorical inquiry focuses on whether moral turpitude necessarily inheres in the minimal conduct for which there is a realistic probability of prosecution under the statute. *See Matter of Short, supra*; *see also Moncrieffe v. Holder*, 133 S.Ct. 1678, 1684-1685 (2013); *Gonzales v. Duenas-Alvarez,* 127 S.Ct. 815, 822 (2007).

Where the statute does not contain a single, indivisible set of elements but rather encompasses multiple distinct criminal offenses, "some . . . which involve moral turpitude and some which do not," the analysis moves beyond the categorical inquiry. *Matter of Short*, supra, at 137-138. In applying the Supreme Court's decision in *Descamps v. United States,* 133 S. Ct. 2276 (2013) to the immigration context, the Board stated that a criminal statute is divisible "only if (1) it lists multiple discrete offenses as enumerated alternatives or defines a single offense by reference to disjunctive sets of 'elements,' more than one combination of which could support a conviction; and (2) at least one, but not all, of those listed offenses or combinations of disjunctive elements is a categorical match" to the relevant generic offense (i.e. an offense involving moral turpitude). *Matter of Chairez-Castrejon*, 26 I&N Dec. 349, 353 (BIA 2014) (citing *Descamps, supra,* at 2283).

If a statute is divisible, we conduct a modified categorical inquiry, reviewing the record of conviction to determine the offense within the statute for which the respondent was convicted. *See Matter of Short, supra*, at 137-38. The record of conviction is a narrow, specific set of documents which includes the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Fajardo, supra*, at 1305 (citing *Jaggernauth v. U.S. Att'y Gen.*, 432 F.3d 1346, 1354-55 (11th Cir. 2005)); *see also Shepard v. U.S.,* 544 U.S. 13, 16 (2005) (finding that the record of conviction is limited to the "charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.")

At the time of the applicant's conviction, Florida Statute 784.03 provided:

784.03. Battery; felony battery

(1)(a) The offense of battery occurs when a person:

1. Actually and intentionally touches or strikes another person against the will of the other; or

2. Intentionally causes bodily harm to another person.

(b) Except as provided in subsection (2), a person who commits battery commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who has one prior conviction for battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a felony of the third

> degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

We note that assault offenses may or may not involve moral turpitude, and the BIA has stated that offenses characterized as "simple assaults" are generally not considered to be crimes involving moral turpitude. *See Matter of Perez-Contreras*, supra; *Matter of Short*, 20 I&N Dec. 136, 139 (BIA 1989); *Matter of Danesh*, 19 I&N Dec. 669, 670 (BIA 1988). The BIA has further stated:

> [W]e have recognized that not all crimes involving the injurious touching of another person reflect moral depravity on the part of the offender.. . . Many simple assault statutes prohibit a wide range of conduct or harm, including *de minimis* conduct or harm, such as offensive or provocative physical contact or insults, which is not ordinarily considered to be inherently vile, depraved, or morally reprehensible.

Matter of Solon, 24 I&N Dec. 239, 241 (BIA 2007) (citing *Matter of Sanudo*, 23 I&N Dec. 968, 971 (BIA 2006).

Under Florida Statute 784.03, the offense of battery occurs when a person actually or intentionally touches or strikes another person against the will of the other or intentionally causes bodily harm to another person. In *Matter of Fualaau*, 21 I&N Dec. 475, 477 (BIA 1996), the BIA determined that simple assault or battery is generally not considered to be a crime involving moral turpitude, even if the intentional infliction of physical injury is an element of the crime. *See also Matter of Sanudo*, 23 I&N Dec. 968, 971 (BIA 2006) (recognizing that not all crimes involving the injurious touching of another person reflect moral depravity on the part of the offender). However, the BIA determined that assault and battery offenses involve moral turpitude where there is an aggravating factor such as the use of deadly weapon, the intentional infliction of serious bodily injury, and bodily harm upon individuals deserving of special protection such as a child, domestic partner, or a peace officer. *See Matter of Sanudo*, 23 I&N Dec. 968 (BIA 2006); *Matter of Medina*, 15 I&N Dec. 611 (BIA 1976); *Matter of Danesh, supra; see also Sosa-Martinez v. US. Atty. Gen.*, 420 F.3d 1338, 1342 (11th Cir. 2005) (holding that aggravated battery which includes the use of a deadly weapon or when the battery results in serious bodily injury is a crime involving moral turpitude).

The Applicant was convicted of simple battery under Florida Statute 784.03, which does not involve aggravating factors such as the use of deadly weapon or the infliction of serious bodily injury. We therefore find that the offense categorically does not involve moral turpitude.[3] Accordingly, we find that the Applicant has not been convicted of a crime involving moral turpitude that would render him

[3] The record of conviction does not indicate whether the applicant was convicted of intentionally touching or striking another person against the will of the other or intentionally causing bodily harm to another person. However, we find that as the minimal conduct for which there is a realistic probability of prosecution under both offenses contained in Florida Statute 784.03(1)(a) does not involve moral turpitude, the offense is categorically not a crime involving moral turpitude.

inadmissible under section 212(a)(2)(A) of the Act. Therefore, the Director's decision will be withdrawn.

ORDER: The Field Office Director's decision is withdrawn and the appeal is dismissed as the underlying waiver application is unnecessary.

Cite as *Matter of L-T-*, ID#15360 (AAO Sept. 2, 2015)