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U.S. Department of Homeland Security  
20 Mass. Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

H2

**PUBLIC COPY**

[REDACTED]

FILE:

Office: PHOENIX, ARIZONA

Date: JAN 02 2008

IN RE:

[REDACTED]

APPLICATION: 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 APPLICANT:

[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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Acting District Director, Phoenix, Arizona, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed as the applicant is not inadmissible under 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), thus the relevant waiver application is moot.

The applicant [REDACTED] is a native and citizen of Mexico who was found 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 committing a crime of moral turpitude. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the Acting District Director denied, finding that the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the Acting District Director*, dated January 27, 2006.

The AAO will first address the finding of inadmissibility.

Section 212(a)(2) of the Act states that:

(A)(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.

Section 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.

The record reflects that on November 8, 1996, the applicant pled guilty to the following domestic violence related charges:

- Assault, Section 13-1203A1, Arizona Revised Statutes, as amended, sentenced to 1 year probation, 31 days jail.
- Damage Property, Section 13-1602A1, Arizona Revised Statutes, as amended, sentenced to 1 year probation, 31 days jail.
- Damage Property, Section 13-1602A1, Arizona Revised Statutes, as amended, sentenced to 1 year probation, 30 days jail.

The criminal complaint number [REDACTED] states that “the defendant did intentionally or knowingly cause physical injury to another, to-wit: [REDACTED], a Class 1 misdemeanor, in violation of Section 13-

1203A1, Arizona Revised Statutes, as amended.”

The criminal complaint number [REDACTED] states that “the defendant did recklessly deface or damage the property of another, to-wit: [REDACTED] in the amount of . . . a Class 2 misdemeanor in violation of Section 13-1602A1, Arizona Revised Statutes, as amended.”

The criminal complaint number [REDACTED] states that “the defendant did recklessly deface or damage the property of another, to-wit: [REDACTED] in the amount of . . . a Class 2 misdemeanor in violation of Section 13-1602A1, Arizona Revised Statutes, as amended.”

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

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

The AAO finds that there is no clear-cut definition of “moral turpitude.” In *Grageda*, the Ninth Circuit Court stated that in “[d]escribing moral turpitude in general terms, courts have said that it is an “act of baseness or depravity contrary to accepted moral standards.” *Grageda v. INS*, 12 F.3d 919, 921 (9th Cir.1993)(quoting *Guerrero de Nodahl v. INS*, 407 F.2d 1405, 1406 (9th Cir. 1969)) *See also McNaughton v. INS*, 612 F.2d 457, 459 (9th Cir.1980)(“Whether a particular crime involves moral turpitude “is determined by the statutory definition or by the nature of the crime not by the specific conduct that resulted in the conviction.”) With regard to the crime of assault, courts generally have held that a conviction for simple assault does not involve moral turpitude. *See, e.g., Reyes-Morales v. Gonzales*, 435 F.3d 937, 945 n. 6 (8th Cir.2006) (observing that simple assault does not involve moral turpitude).

The applicant was convicted of intentionally or knowingly causing physical injury to another in violation of Section 13-1203A1, Arizona Revised Statutes, as amended. U.S. courts and the BIA have held that not all crimes involving assault or battery are considered crimes involving moral turpitude. For example, the BIA in *In re Samudo*, 23 I&N Dec. 968, 970-971 (BIA 2006), stated that “not all crimes involving the injurious touching of another reflect moral depravity on the part of the offender, even though they may carry the label of assault, aggravated assault, or battery under the law of the relevant jurisdiction.” (citing *Matter of B-*, 1 I&N Dec. 52, 58 (BIA, A.G. 1941) (finding that second-degree assault under Minnesota law does not qualify categorically as a crime involving moral turpitude (following *United States ex rel. Zaffarano v. Corsi*, 63 F.2d 757, 758 (2d Cir. 1933)). In *Matter of Fualaau*, 21 I&N Dec. 475 (BIA 1996), the BIA held that third-degree assault under the law of Hawaii, an offense of recklessly causing bodily injury to another person, is not a crime of moral turpitude. And in *Matter of Perez-Contreras*, 20 I&N Dec. 615 (BIA 1992), it concluded that

third-degree assault under the law of Washington, an offense of negligently causing bodily harm accompanied by substantial pain which caused considerable suffering, is not a crime of moral turpitude.

Normally, if a crime is “inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general” it involves moral turpitude. *In re. Sanudo* at 976. (citations omitted). Whether a crime is morally turpitudinous is determined by reference to the statutory definition of the offense and to court decisions in the convicting jurisdiction. However, the actual conduct underlying the conviction cannot be considered. *Id.* at 970-971. (citations omitted).

The Ninth Circuit has found that with regard to domestic violence crimes, which is the case with the applicant’s conviction, the special relationship between the parties is not sufficient, by itself, to turn every battery or assault involving domestic violence into a crime of moral turpitude. *See, e.g., Galeana-Mendoza*, 465 F.3d 1054, 1060 (9<sup>th</sup> Cir. 2006) (“Given that force that is neither violent nor severe and that causes neither pain nor bodily harm may constitute battery, the relationship element of section 243(e)(1), is not sufficient to, by itself, transform every battery under section 243(e)(1) into a crime categorically grave, base, or depraved”).

In determining whether a crime involves moral turpitude, the Ninth Circuit indicated that it applies the categorical and modified categorical approaches. *See, e.g., Galeana-Mendoza v. Gonzales*, 465 F.3d 1054 (9<sup>th</sup> Cir. 2006); *Jose Roberto Fernandez-Ruiz v. Gonzales*, 468 F.3d 1159, 1163 (9<sup>th</sup> Cir. 2006). Under the categorical approach, it looks “only to the fact of conviction and the statutory definition of the prior offense,” and determines whether “the full range of conduct proscribed by the statute constitutes a crime of moral turpitude.” *Galeana-Mendoza* at 1058 (citations and internal quotation marks omitted). If it does not, it applies the modified categorical approach, under which it may “look beyond the language of the statute to a narrow, specified set of documents that are part of the record of conviction, including the indictment, the judgment of conviction, jury instructions, a signed guilty plea, or the transcript from the plea proceedings, to determine whether the alien was in fact convicted of an offense that qualifies as a crime involving moral turpitude. *Id.* (citations and internal quotation marks omitted). The Ninth Circuit has further clarified that that the charging document, or information, is not reliable where the plea was to an offense other than the one charged. *Martinez-Perez v. Gonzales*, 417 F.3<sup>rd</sup> 1022, 1028-29 (9<sup>th</sup> Cir. 2005). It is also important to note that the record of conviction does not include the arrest report. *See In re Teixeira*, 21 I&N Dec. 316, 319-20 (BIA 1996).

A statute must have a “willful” or “intentional” element and conduct that results in bodily injury that is more than insubstantial to constitute a crime of moral turpitude. *Jose Roberto Fernandez-Ruiz* at 1165-1168. In *Jose Roberto Fernandez-Ruiz*, the court stated that it explained in *Galeana-Mendoza v. Gonzales*, 465 F.3d 1054 (9<sup>th</sup> Cir. 2006) that:

*Grageda* stands only for the proposition that “when a person beats his or her spouse *severely enough to cause ‘a traumatic condition,’* he or she has committed an act of baseness or depravity contrary to accepted moral standards.” *Id.* (quoting *Grageda*, 12 F.3d at 922 (discussing CAL. PENAL CODE § 273.5(a))) (emphasis added). It does *not* suggest that a spousal contact that causes minor injury or a spousal threat that results in no physical injury constitutes a crime of moral turpitude. Rather, the California spouse abuse and child abuse

statutes that we held to involve moral turpitude in *Grageda* and *Guerrero de Nodahl* both required the willful infliction of bodily “injury resulting in a traumatic condition.” *Grageda*, 12 F.3d at 921 (quoting CAL. PENAL CODE § 273.5(a)) (emphasis added); *Guerrero de Nodahl*, 407 F.2d at 1406 n. 1 (quoting CAL. PENAL CODE § 273d) (emphasis added).

*Jose Roberto Fernandez-Ruiz* at 1167.

The court stated that “[a] simple assault statute which permits a conviction for acts of recklessness, or for mere threats, or for conduct that causes only the most minor or insignificant injury is not limited in scope to crimes of moral turpitude.” *Jose Roberto Fernandez-Ruiz* at 1167.

With the statute here, ARIZ. REV. STAT. § 13-1203(A)(1), the AAO finds that the plain text of the provision makes clear that a conviction under subsection (A)(1) does not require a person to cause serious bodily injury to another. A person is convicted for causing “physical injury to another.” Because the statute permits a conviction for conduct that causes only the most minor or insignificant injury, the applicant’s 1996 assault conviction is not, under the categorical test, for a crime involving moral turpitude.

Applying the modified categorical approach, the applicant’s record of conviction demonstrates only that the applicant was convicted pursuant to section 13-1203(A)(1) of Arizona Revised Statutes, as amended. Although the applicant’s arrest report is contained in the record of proceeding, the record of conviction does not include the arrest report. *See In re Teixeira*, 21 I&N Dec. 316, 319-20 (BIA 1996). In the absence of admissible evidence reflecting that the applicant’s offense caused serious bodily injury to the victim, the record fails to establish that the applicant’s crime involves moral turpitude.

With regard to the applicant’s two property damage convictions for recklessly defacing or damaging the property of another, malicious destruction of property was found not to constitute a crime of moral turpitude in *Matter of M-*, 2 I&N Dec. 686 (BIA 1946) (unlawful destruction of railway telegraph equipment found not to involve moral turpitude), *Matter of C-*, 2 I&N Dec. 716 (BIA 1947) (no moral turpitude in damaging a glass door of private property), and *Matter of B-*, 2 I&N Dec. 867 (BIA 1947) (willfully damaging mailboxes and other property found not involve moral turpitude).

Accordingly, the AAO finds that the applicant is not inadmissible. The applicant’s waiver of inadmissibility application is thus moot and the January 27, 2006 decision of the Acting District Director decision will be withdrawn.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden.

**ORDER:** The January 27, 2006 decision of the Acting District Director is withdrawn. The appeal is dismissed as the underlying application is moot.