



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **MAR 26 2014** Office: LOS ANGELES, CA

IN RE:

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Los Angeles, California, denied the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO then granted the applicant's motion and the underlying application remained denied. The matter is again before the AAO on a motion to reopen and reconsider. The motion will be granted. The AAO decisions are affirmed.

The applicant is a native and citizen of Mexico who was determined to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), for having been ordered removed from the United States. She seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States.

The Field Office Director determined that the applicant did not merit a favorable exercise of discretion and denied the Form I-212 accordingly. *Field Office Director's Decision*, dated June 15, 2010. The AAO also concluded that the negative factors in the applicant's case outweighed the favorable factors and dismissed the applicant's appeal, additionally finding the applicant to have failed to establish that her conviction pursuant to California (Cal.) Vehicle Code § 20001(a) was not a crime involving moral turpitude. *AAO Decision*, dated June 3, 2011. In response to the applicant's motion, the AAO found that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for committing a crime involving moral turpitude; she has not been granted a waiver of her inadmissibility; and therefore no purpose would be served in considering her Form I-212. *Second AAO Decision*, dated October 26, 2012.

On motion, counsel contests the AAO's finding that the applicant was convicted of a crime involving moral turpitude and provides new evidence of the medical issues of the applicant, her spouse and her daughter for consideration. *Form I-290B, Notice of Appeal or Motion*, filed November 21, 2012.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Based on the new medical documentation submitted, the requirements of a motion to reopen have been met.

The record includes, but is not limited to, briefs from counsel; statements from the applicant, her spouse, her son-in-law and her daughter; medical documentation relating to the applicant, her spouse and her daughter; financial records; educational records; statements of support from her friends; country-conditions information for Mexico; and criminal records. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (ii) Other aliens.-Any alien not described in clause (i) who-
  - (I) has been ordered removed under section 240 or any other provision of law, or
  - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

On February 12, 1993, the applicant was placed into immigration proceedings for having entered the United States without inspection in November 1985. She was ordered removed from the United States on February 17, 1993 and was removed on February 18, 1993. As such, she is inadmissible under 212(a)(9)(A)(ii) of the Act. Prior to considering the applicant's eligibility for an exception under section 212(a)(9)(A)(iii) of the Act, the AAO will address counsel's assertion that the applicant has not committed a crime involving moral turpitude that bars her admission to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(2)(A)(i)(I) of the Act provides:

- (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 record reflects that on September 26, 1991, the applicant was convicted of Battery under Cal. Penal Code § 242, a misdemeanor. She was sentenced to 25 days in jail, suspended, and 24 months

of probation. On May 27, 1992, the applicant was convicted of two felonies, Driving Under the Influence, Cal. Vehicle Code § 23152(a), and Hit and Run Causing Injury, Cal. Vehicle Code § 20001(a). She was sentenced to 16 months in prison for each offense, with the sentences to run concurrently.

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

(Citations omitted.)

To determine if a crime involves moral turpitude, the Ninth Circuit Court of Appeals employs the categorical approach set forth in *Taylor v. United States*, 110 S.Ct. 2143 (1990). See *Nicanor-Romero v. Mukasey*, 523 F.3d 999, 1004 (9th Cir. 2008), *overruled on other grounds by Marmolejo-Campos v. Holder*, 58 F.3d 903, 911 (9th Cir. 2009). The purpose of the categorical approach is to determine whether the full range of conduct encompassed by the statute constitutes a crime of moral turpitude. *Cuevas-Gaspar v. Gonzalez*, 430 F.3d 1013, 1017 (9th Cir. 2005), *abrogation on other grounds recognized by Holder v. Martinez-Gutierrez*, 132 S.Ct. 2011, 2020-21 (2012). If the statute “criminalizes both conduct that does involve moral turpitude and other conduct that does not, the modified categorical approach is applied.” *Marmolejo-Campos*, 558 F.3d at 912 (citing *Fernando-Ruiz v. Gonzalez*, 466 F.3d 1121, 1163 (9th Cir. 2006)); see also *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1161 (9th Cir. 2009). However, there must be “a realistic probability, not a theoretical possibility, that the statute would be applied to reach conduct that did not involve moral turpitude.” *Nicanor-Romero*, 523 F.3d at 1004 (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). To demonstrate a “realistic probability,” the applicant must point to his or her own case or other cases in which the state courts in fact did apply the statute to conduct not involving moral turpitude. 523 F.3d at 1004-05. A realistic probability also exists where the statute expressly punishes conduct not involving moral turpitude. See *U.S. v. Vidal*, 504 F.3d 1072, 1082 (9<sup>th</sup> Cir. 2007).

Once a realistic probability is established, the modified categorical approach is applied, which requires looking to the “limited, specified set of documents” that comprise what is known as the record of conviction – the charging document, a signed plea agreement, jury instructions, guilty pleas, transcripts of a plea proceeding and the judgment – to determine if the conviction entailed admission to, or proof of, the elements of a crime involving moral turpitude. *Castillo-Cruz*, 581 F.3d at 1161 (citing *Fernando-Ruiz*, 466 F.3d at 1132-33); see also *Marmolejo-Campos*, 558 F.3d at 912 (citing *Cuevas-Gaspar*, 430 F.3d at 1020). The Ninth Circuit has reaffirmed that courts may not examine evidence outside the record of conviction in determining whether a conviction was for a

crime involving moral turpitude. See *Olivas-Motta v. Holder*, 716 F.3d 1199 (9th Cir. 2013) (rejecting *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)). Where the burden of proof is on the applicant, as in the present case, the applicant cannot sustain that burden where the record of conviction is inconclusive. *Young v. Holder*, 697 F.3d 976, 989 (9th Cir. 2012).

At the time of the applicant's conviction for Hit and Run Causing Injury, Cal. Vehicle Code § 20001(a) stated:

The driver of any vehicle involved in an accident resulting in injury to any person, other than himself or herself, or in death of any person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004.

At that time, the requirements of Cal. Vehicle Code § 20003 were as follows:

(a) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall also give his or her name, current residence address, the registration number of the vehicle he or she is driving, and the name and current residence address of the owner to the person struck or the driver or occupants of any vehicle collided with and shall give the information to any traffic or police officer at the scene of the accident and shall render to any person injured in the accident reasonable assistance, including the transportation or the making arrangements for the transportation of that person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if that transportation is requested by the injured person.

(b) Any driver subject to the provisions of subdivision (a) shall also, upon being requested, exhibit his or her driver's license, if available, to the person struck or to the driver or occupants of any vehicle collided with and to any traffic or police officer at the scene of the accident.

As indicated by counsel, the Ninth Circuit Court of Appeals in *Cerezo v. Mukasey*, 512 F.3d 1163 (9<sup>th</sup> Cir. 2008), held that a conviction under Cal. Vehicle Code § 20001(a) is not categorically a crime involving moral turpitude, finding the offense to punish "several crimes, some of which may involve moral turpitude and some of which may not." *Id.* at 1169 (quoting *Navarro-Lopez*, 503 F.3d 1069, 1073 (9<sup>th</sup> Cir. 2007)). The court stated that, "Reading § 20001(a) literally, a driver in an accident resulting in injury who stops and provides identification, but fails to provide a vehicle registration number, has violated the statute. The failure to provide a vehicle registration number under such circumstances is not base, vile and depraved; nor does it necessarily evince any willfulness or evil intent, a requisite element of crimes of moral turpitude." *Cerezo v. Mukasey* at 1167. The court thus described that a conviction under this statute might not involve moral turpitude, for example, when an individual provides identification but not a vehicle registration number. Conversely, someone convicted under Cal. Vehicle Code § 20001(a) who fails to provide any of the information and assistance required under the statute could be convicted of a crime involving moral turpitude. See *People v. Bautista*, 217 Cal.App.3d 1 (Cal.Ct.App.1990).

Because the relevant statute criminalizes conduct that involves moral turpitude and conduct that does not, the AAO, applying a modified categorical approach, has reviewed the applicant's record of

conviction, which in the present case includes the abstract of judgment issued by the Superior Court of California, County of Los Angeles, and the information, in which Count 3 charges the applicant with a violation of Cal. Vehicle Code § 20001(a).

Count 3 states:

On or about April 10, 1992, in the County of Los Angeles, the crime of HIT AND RUN CAUSING INJURY, in violation of VEHICLE CODE SECTION 20001(a), a Felony, was committed by YOLANDA ROSALES, who did willfully, unlawfully, and knowingly being a driver of a vehicle involved in an accident resulting in injury to a person other than himself/herself, fail, refuse, and neglect to give to the injured person and to a traffic and police officer at the scene of the accident his/her name and address, the registration number of his/her vehicle, and the name of the owner of said vehicle; to exhibit his/her operator's license; to render reasonable assistance to the injured person; and perform the duties specified in Vehicle Code Sections 20003 and 20004.

The determining issue is whether the applicant has shown that her violation of Cal. Vehicle Code § 20001(a) was not for a crime involving moral turpitude. According to the information document, the applicant failed to provide any of the required information or assistance to the injured person and to officers at the scene of the accident. As such, the record reflects that she committed a crime involving moral turpitude and she is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act.<sup>1</sup>

Counsel asserts that the criminal complaint states the applicant "neglected a duty" and does not claim her neglect of duty was knowing, intentional or willful. Counsel states that neglect can be interchangeable with negligence, carelessness or inattention; therefore the applicant did not have the requisite mental state to have committed a crime involving moral turpitude. Counsel also states that the preliminary hearing transcript establishes that the applicant did not commit a crime involving moral turpitude.

In cases under the jurisdiction of the Ninth Circuit, the AAO applies the modified categorical approach and may look only at the record of conviction, which includes the charging document, a signed plea agreement, jury instructions, guilty pleas, transcripts of a plea proceeding and the judgment. Although counsel submits the applicant's preliminary hearing transcript, counsel has not established that this transcript is part of the record of conviction. Counsel refers to specific testimony in the preliminary hearing transcript to assert that the applicant's actions were not knowing, willful or intentional and therefore she did not commit a crime involving moral turpitude. Counsel also asserts that the transcript does not show that the applicant's neglect of duty was knowing, intentional or willful, as "she was drunk and....did not have the mental capacity to be aware her car hit someone." Moreover, counsel states that the applicant was not speeding after the incident, as would someone trying to leave the scene of an accident, and this further establishes that her neglect of duty was not knowing, intentional or willful.

---

<sup>1</sup> Although the AAO has found the applicant was convicted of only one crime involving moral turpitude, she is not eligible for the petty offense exception found in section 212(a)(2)(ii)(II) of the Act, as she was sentenced to more than six months of imprisonment for her violation of Cal. Vehicle Code § 20001(a).

The AAO notes that the information document for count 3 includes the terms “willfully, unlawfully, and knowingly.” The applicant has not shown that she was convicted for violations that were not willful, unlawful, and knowing. Counsel’s claims regarding facts from the preliminary hearing transcript, which has not been shown to be part of the record of conviction in this matter, do not supersede the statute and information document used to support the applicant’s conviction.

*Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act. Although in our June 3, 2011 decision, we discussed the applicant’s eligibility for an exception under section 212(a)(9)(A)(iii) of the Act despite having noted her section 212(a)(2)(A)(i)(I) inadmissibility, we will not do so here. The applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and she has not been granted a waiver of that inadmissibility. Consequently, we find that no purpose would be served by further consideration of the Form I-212. The application will remain denied.

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 not been met.

**ORDER:** The motion is granted and the AAO decisions are affirmed.