



**U.S. Department of Justice**

Executive Office for Immigration Review

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Phoenix, AZ 85002**

**Name: SOLIS-TADEO, AARON MANUEL**

**A077-290-731**

**Date of this notice: 8/8/2012**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

**Panel Members:**

Kendall-Clark, Molly  
Malphrus, Garry D.  
Neal, David L

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SOLIS-TADEO, AARON MANUEL  
(A077 290 731)  
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DHS/ICE Office of Chief Counsel - EAZ  
P.O. Box 25158  
Phoenix, AZ 85002

Name: SOLIS-TADEO, AARON MANUEL

A077-290-731

Date of this notice: 8/8/2012

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:

Kendall-Clark, Molly  
Malphrus, Garry D.  
Neal, David L

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Falls Church, Virginia 22041

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File: A077 290 731 - Phoenix, AZ

Date: AUG 08 2012

In re: AARON MANUEL SOLIS-TADEO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Katherine L. DeStefano, Esquire

ON BEHALF OF DHS: Alec J. Niziolek  
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)] -  
Convicted of crime involving moral turpitude

APPLICATION: Termination of proceedings

This case was last before the Board on July 22, 2009, when we dismissed the respondent's appeal of the Immigration Judge's March 12, 2009, decision finding him removable as charged and ineligible for relief from removal. This case is now before the Board pursuant to the January 26, 2012, decision of the United States Court of Appeals for the Ninth Circuit, in whose jurisdiction it arises. The record will be remanded to the Immigration Judge for further proceedings consistent with this opinion and for entry of a new decision.

Upon remand, the Ninth Circuit has directed the Board to consider whether the respondent's January 22, 2008, conviction for assault by means likely to produce great bodily injury, a felony, in violation of California Penal Code section 245(a)(1), constitutes a crime involving moral turpitude.<sup>1</sup> In his brief on remand, the respondent contends that his conviction does not qualify as a crime involving moral turpitude because a *mens rea* of negligence, as indicated by the fact that the statute requires only a general intent, is sufficient to obtain a conviction. See Respondent's Brief at 10-15. The respondent also asserts that his offense does not require base, vile, or depraved conduct. See *id.* at 15-17. The Department of Homeland Security ("DHS") has filed an opposition brief.

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<sup>1</sup> In our prior decision, we considered the respondent's conviction as one for assault with a deadly weapon in violation of California Penal Code section 245(a)(1) which, at the time of the respondent's conviction, provided, in pertinent part, "[a]ny person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or *by any means of force likely to produce great bodily injury...*" See Cal. Penal Code § 245(a)(1) (2008) (emphasis added). According to the record of conviction, the respondent eventually pled to assault by any means of force likely to produce great bodily injury.

The Ninth Circuit has held that “simple assault and battery convictions are not categorically [crime involving moral turpitude] convictions because the required mens rea for [such crimes] is usually the intent to touch another offensively, not the ‘evil’ intent typically required for a [crime involving moral turpitude].” *Uppal v. Holder*, 605 F.3d 712, 716 (9th Cir. 2010); *see also Latter-Singh v. Holder*, 668 F.3d 1156 (9th Cir. 2012). Such offenses, however, may be transformed into crimes involving moral turpitude “if they necessarily involve[ ] aggravating factors that significantly increase[ ] their culpability,” such as “the intentional infliction of serious bodily injury on another.” *See Galeana-Mendoza*, 465 F.3d 1054, 1061 (9th Cir. 2006) (quoting *Matter of Sanudo*, 23 I&N Dec. 968, 973 (BIA 2006)). The distinction, as the court in *Uppal* explained, is “‘some aggravating dimension’ sufficient to increase the culpability ... [and] transform the offense into one categorically a [crime involving moral turpitude],” “one that says something about the turpitude or blameworthiness inherent in the action.” *See id.* at 717. The court concluded that “an assault statute *not* involving a specific intent to injure or a special trust relationship and *not* requiring that the assault cause death or even serious bodily injury cannot qualify as a categorical [crime involving moral turpitude].” *See id.* at 719 (emphasis added).

The California statute in this case provides that a person is guilty of assault if he “commits an assault upon the person of another...by any means of force likely to produce great bodily injury.” *See Cal. Penal Code § 245(a)(1)* (2008). An “assault” does not require the government prove an intent to physically injure or an actual physical injury but, for purposes of the relevant statute, it does require that the government prove the perpetrator acted wilfully or purposefully and that their action(s) would naturally and directly lead to force being brought against another person, coupled with a present ability to inflict injury upon the victim. *See Cal. Penal Code § 240*.

Because the relevant statute does not involve a special trust relationship nor a specific intent to injure or an actual physical injury, it is not a categorical crime involving moral turpitude. *See Uppal v. Holder, supra* at 719; *see also Latter-Singh v. Holder, supra*. Further, the record of conviction, as it stands, does not contain sufficient evidence for us to determine whether the respondent’s conviction involves moral turpitude under a modified categorical approach (Exh. 4). Because the Immigration Judge previously found the respondent removable as charged based on the evidence contained in the record, the DHS was not provided the opportunity to provide additional evidence to meet its burden of proof. Therefore, we will remand the record to the Immigration Judge for further fact-finding regarding the respondent’s removability as charged and/or eligibility for relief, if required.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this opinion and with the decision of the Ninth Circuit.

  
FOR THE BOARD