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Falls Church, Virginia 22041

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**Los Angeles, CA 90014**

**Name: VILLATORO, ADONAY**

**A 094-085-163**

**Date of this notice: 11/27/2015**

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:  
Pauley, Roger

Userteam: Docket

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Falls Church, Virginia 22041

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File: A094 085 163 – Los Angeles, CA

Date:

**NOV 27 2015**

In re: ADONAY VILLATORTO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jeffrey A. Jung, Esquire

ON BEHALF OF DHS: Elena Kusky  
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

The Department of Homeland Security (“DHS”) appeals from the Immigration Judge’s decision dated March 12, 2014, terminating the respondent’s proceedings. The respondent, a native and citizen of El Salvador and lawful permanent resident of the United States, opposes the appeal. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility made by the Immigration Judge for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met the relevant burden of proof and issues of discretion, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

We agree with the Immigration Judge that the DHS has not met its burden of demonstrating that the respondent was convicted of a crime involving moral turpitude (“CMT”). See section 240(c)(3)(A) of the Immigration and Nationality Act (stating that the DHS has the burden of establishing by clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable), 8 U.S.C. § 1229a(c)(3)(A). In determining whether the respondent was convicted of a CMT, “we apply the categorical approach articulated in *Taylor v. United States*, 495 U.S. 575, 598-602 (1990), and compare the elements of the state offense with those of the generic definition of a CMT to determine if there is a categorical match.” *Mancilla-Delafuente v. Lynch*, No. 12-73469, 2015 WL 6646272, --- F.3d --- (9th Cir. Nov. 2, 2015); see also *Descamps v. United States*, 133 S.Ct. 2276, 2283-86, (2013). “Under the categorical approach, a crime involves moral turpitude if the generic elements of the crime show that it involves conduct that ‘(1) is base, vile, or depraved and (2) violates accepted moral standards.’” *Blanco v. Mukasey*, 518 F.3d 714, 718 (9th Cir. 2008) (citing *Navarro-Lopez v. Gonzales*, 503 F.3d 1063, 1068 (9th Cir. 2007)). The United States Supreme Court has held that crimes that involve fraud categorically fall into the definition of crimes involving moral

turpitude. See *Jordan v. De George*, 341 U.S. 223, 227 (1951) (“Without exception . . . a crime in which fraud is an ingredient involves moral turpitude.”). “A crime involves fraudulent conduct, and thus is a crime involving moral turpitude, if intent to defraud is either ‘explicit in the statutory definition’ of the crime or ‘implicit in the nature’ of the crime.” *Blanco v. Mukasey*, *supra*, at 719 (citing *Goldeshtein v. INS*, 8 F.3d 645, 648 (9th Cir.1993)).

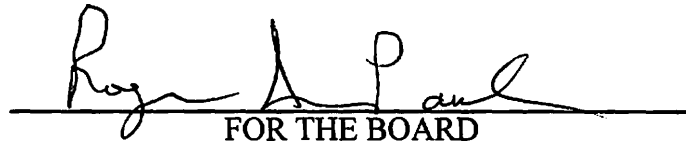
In 2007, the respondent was convicted under section 714.8(11) of the Iowa Code Annotated (“I.C.A.”), which states that a person is guilty of a fraudulent practice when he “[r]emoves, defaces, covers, alters, or destroys any component part number . . ., vehicle identification number . . ., or product identification number . . ., for the purpose of concealing or misrepresenting the identity or year of manufacture of the component part or vehicle” (I.J. at 2-3; Exh. 2). Unlike other subsections of I.C.A. § 714.8 (e.g., §§ 714.8(9) and (18)), subsection 714.8(11) does not contain an explicit intent to defraud. See *Blanco v. Mukasey*, *supra*, at 719 (stating that that “[t]he element of knowing misrepresentation does not itself make fraud an element of the crime”); see also *State v. Hoyman*, 863 N.W. 2d 1, 9-15 (Iowa 2015) (stating that while section 714.8(4) contains as an element the intent to deceive, this is distinguishable, and broader than, an intent to defraud); *State v. Osborn*, 368 N.W.2d 68 (Iowa 1985) (stating that the legislature did not require proof of an intent to defraud in section 714.8(10) “merely by designating the offenses as fraudulent practices”). “Because intent to defraud is not a statutory element of the offense, we must determine whether intent to defraud is part of the crime’s essential nature.” *Blanco v. Mukasey*, *supra*, at 719.

The Ninth Circuit has held that intent to defraud is implicit in the nature of the crime “when the individual makes false statements in order to procure something of value, either monetary or non-monetary.” *Id.*; see also *Hernandez-Cruz v. Holder*, 651 F.3d 1094, 1108 (9th Cir. 2011) (stating that an “implicit intent to defraud exists only where (1) the alien uses deceit, graft, trickery, or dishonest means to (2) obtain something of value . . . .”) (internal quotation marks omitted). “Fraud therefore does not equate with mere dishonesty, because fraud requires an attempt to induce another to act to his or her detriment,” and “[o]ne can act dishonestly without seeking to induce reliance.” *Blanco v. Mukasey*, *supra*, at 719.

Here, as noted by the Immigration Judge, the statute of conviction does not require proof that a defendant employed false statements to procure something of value (I.J. at 3-4). *Id.* (stating that the intent to defraud is implicit in the nature of the crime “only when the individual employs false statements to obtain something tangible”); see also *State v. McSorley*, 549 N.W.2d 807 (Iowa 1996) (stating that a conviction for making false entries in corporate records in violation of 714.8(4) did not require proof that the defendant actually obtained any money, services, or property as a result of the false entries). We are unpersuaded by the DHS’s argument that a defendant convicted under I.C.A. § 714.8(11) obtains something of value when he obtains a part or a car of which the age or identity is not known. Furthermore, we agree with the respondent that *Matter of Kochlani*, 24 I&N Dec. 128 (BIA 2007), and *Winestock v. INS*, 576 F.2d 234 (9th Cir. 1978), are distinguishable as the statutes in both of those cases require the attempted or actual sale, transfer, receipt, delivery, or trafficking of securities (in the case of *Winestock*) or goods or services (in the case of *Matter of Kochlani*). See *Matter of Flores*, 17 I&N Dec. 225 (BIA 1980) (finding uttering or selling counterfeit paper relating to the registry of aliens involves inherent deception of the government such as to be a CIMT).

Because Iowa Criminal Code section 714.8(11) neither contains an explicit intent to defraud nor requires that the defendant makes false statements in order to obtain something tangible, the respondent has not been convicted of a categorical CIMT. As the DHS has not meaningfully challenged the Immigration Judge's conclusion that the statute is indivisible, resort to the modified categorical approach is not appropriate (I.J. at 4). Accordingly, the appeal will be dismissed.

ORDER: The DHS's appeal is dismissed.

  
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
606 SOUTH OLIVE STREET, 15<sup>TH</sup> FLOOR  
LOS ANGELES, CALIFORNIA 90014

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LOS ANGELES, CALIFORNIA 90013

IN THE MATTER OF  
VILLATORO, ADONY

FILE: A094-085-163

DATE: APRIL 18, 2014

\_\_\_\_ UNABLE TO FORWARD – NO ADDRESS PROVIDED

\_\_\_\_ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:

BOARD OF IMMIGRATION APPEALS  
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FALLS CHURCH, VA 20530

\_\_\_\_ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242 (c) (3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 C.F.R. SECTION 1229A(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT  
606 SOUTH OLIVE STREET  
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X  OTHER:  TERMINATION ORDER.

  
\_\_\_\_\_  
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IMMIGRATION COURT

FF

CC: ELENA KUSKY, ESQ.  
606 SOUTH OLIVE STREET, 8<sup>TH</sup> FLOOR  
LOS ANGELES, CALIFORNIA 90014

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
LOS ANGELES, CALIFORNIA**

File No.: **A094 085 163**

In the Matter of:

**VILLATORO, Adony**

Respondent

**IN REMOVAL PROCEEDINGS**

**CHARGE:** Section 237(a)(2)(A)(i) of the Immigration and Nationality Act (INA) – *alien convicted of a crime involving moral turpitude (CMT) within five years after the date of admission for which a sentence of one year or longer may be imposed*

**ON BEHALF OF RESPONDENT:**

Julie R. Sparks, Esquire  
Joseph A. Vail Center for Immigrant Rights  
448 South Hill Street, Suite 615  
Los Angeles, California 90013

**ON BEHALF OF THE GOVERNMENT:**

Elena Kusky, Assistant Chief Counsel  
U.S. Department of Homeland Security  
606 South Olive Street, Eighth Floor  
Los Angeles, California 90014

**DECISION AND INTERIM ORDERS OF THE IMMIGRATION JUDGE**

**I. Procedural History**

On November 3, 2011, the Government served Adony Villatoro (Respondent) via regular mail with a Notice to Appear (NTA). Exh. 1. Therein, the Government made the following factual allegations:

- (1) Respondent is not a citizen or national of the United States;
- (2) Respondent is a native and citizen of El Salvador;
- (3) On January 29, 2004, Respondent's status was adjusted to that of Lawful Permanent Resident at Chicago, Illinois;
- (4) On September 28, 2007, Respondent was convicted in the Iowa District Court for Muscatine County, Iowa, of a violation of section 714.8(11) of the Iowa Criminal Code for Fraudulent Practices in the second degree, a Class D felony;<sup>1</sup> and
- (5) For that offense, a sentence of one year or longer may be imposed.

<sup>1</sup> The NTA states that Respondent was convicted under section 714.(11). However, the Government and Respondent agreed that the NTA should have cited to section 714.8(11) instead.

Id. Accordingly, the Government charged Respondent as removable pursuant to section 237(a)(2)(A)(i) of the INA. Id. Jurisdiction vested and removal proceedings commenced when the Government filed the NTA with this Court on November 7, 2011. See 8 C.F.R. § 1003.14(a).

On October 9, 2011, Respondent, through counsel, admitted allegations one through three, denied allegations four and five, and denied the charge of removability. On January 30, 2013, the Government filed documents relating to Respondent's charge, and on May 17, 2013, Respondent admitted allegations four and five, but denied the charge of removability. See Exhs. 1, 2.

On June 21, 2013, Respondent submitted a brief on contested removability, alleging that he is not removable under section 237(a)(2)(A)(i) of the INA because he was not convicted of a CIMT. The Government submitted an opposition to Respondent's brief on October 23, 2013.

For the following reasons, the Court finds that Respondent was not convicted of a CIMT and is therefore not removable under section 237(a)(2)(A)(i) of the INA. Accordingly, the Court **DISMISSES** Respondent's charge and **TERMINATES** his proceedings.

## **II. Law and Analysis**

Pursuant to section 237(a)(2)(A)(i) of the INA, any alien who is convicted of a CIMT committed within five years after the date of admission and for which a sentence of one year or longer may be imposed is removable. INA § 237(a)(2)(A)(i). Generally, crimes are deemed to involve moral turpitude if they fall into one of two categories: (1) offenses involving grave acts of baseness and depravity that offend the most fundamental values of society, and (2) offenses involving fraud. See Robles-Urrea v. Holder, 678 F.3d 702, 708 (9th Cir. 2012); Hernandez-Cruz v. Holder, 651 F.3d 1094, 1108 (9th Cir. 2011) (noting that an offense involves fraud when intentional fraud is an element of the offense or the crime itself is inherently fraudulent). To determine whether a respondent's conviction is one involving moral turpitude, the Court should first look to the statute of conviction to determine whether the crime is categorically a CIMT. Olivas-Motta v. Holder, 716 F.3d 1199, 1203 (9th Cir. 2013). Under the categorical approach, the Court may look only to the elements of the statute of conviction, and may not consider the particular circumstances of the conviction. See id. If that "categorical" inquiry does not resolve the question and the statute is "divisible," containing one or more elements of the offense in the alternative, the Court should then conduct a "modified categorical" analysis by looking to the alien's record of conviction. Id.; Descamps v. United States, 133 S.Ct. 2276, 2283 (2013). However, if the statute is "indivisible," meaning it does not contain alternative theories of violation, or none of its alternative theories match the federal generic definition of a crime involving moral turpitude, then the court may not conduct a modified categorical analysis. See Descamps, 133 S.Ct. at 2283, 2291.

Respondent was convicted under section 714.8 of the Iowa Criminal Code, which states that a person is guilty of a fraudulent practice when he: <sup>2</sup>

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<sup>2</sup> The fact that the word "fraudulent" is attached to the proscribed conduct does not compel the conclusion that every offense under this clause would involve moral turpitude. It is the elements

[r]emoves, defaces, covers, alters, or destroys any component part number...vehicle identification number...or product identification number...for the purpose of concealing or misrepresenting the identity or year of manufacture of the component part or vehicle.

See I.C.A. § 714.8(11).

In the present case, the Court finds that Respondent's conviction under section 714.8(11) of the Iowa Criminal Code is not categorically a CIMT. First, no courts have found that statutes with the same or similar elements as section 714.8(11) constitute CIMTs.<sup>3</sup> Therefore, in order to determine whether section 714.8(11) criminalizes conduct that is fraudulent, and consequently qualifies as a crime of moral turpitude, it has to meet either of two conditions: intentional fraud must be an element of the offense, or the crime must be "inherently fraudulent." Hernandez-Cruz, 651 F.3d at 1108. The crime is "inherently fraudulent" when the statute of conviction requires making knowingly false representations in order to induce another to act to his or her detriment. Id.; Blanco v. Mukasey, 518 F.3d 714, 719 (9th Cir. 2008). Mere dishonesty, or the element of knowing misrepresentation, is not enough for an offence to be considered fraudulent. See Blanco, 518 F.3d at 719. As such, fraudulent intent is only recognized when an individual, who makes knowingly false misrepresentations, gains something tangible, such as money. Id. (noting that fraudulent intent has been found to be present when a person had obtained securities, a passport, a driver's license, naturalization papers, or military deferment).

Section 714.8(11) of the Iowa Criminal Code does not, on its face, require intent to defraud for conviction. See I.C.A. § 714.8(11). Thus, it is necessary to determine whether fraud is "implicit in the nature of the crime." Winestock v. INS, 576 F.2d 234, 235 (9th Cir. 1978). Here, the statute of conviction does not require that an individual gain something tangible; rather, it punishes removing or altering a vehicle identification number in order to "conceal[] or misrepresent[]" the identity or year of manufacture of the vehicle or its component parts. In addition, a person can be convicted under section 714.8 of the Iowa Criminal Code without obtaining, or attempting to obtain, money, services, or property. See State v. McSorley, 549 N.W.2d 807 (Iowa 1996) (finding that a conviction under section 714.8(4) of the Iowa Criminal

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of the offense that determine whether a conviction is a crime involving moral turpitude, not the name or designation of the offense. Compare Matter of Balao, 20 I&N Dec. 440 (BIA 1992) (holding that offense of passing bad checks does not involve moral turpitude because fraud was not an element of the offense) with Matter of Bart, 20 I&N Dec. 436 (BIA 1992) (holding that offense of passing bad checks involves moral turpitude because fraud was an element of offense); see also Forbes v. Brownell, 149 F. Supp. 848 (D.D.C 1957).

<sup>3</sup> The Board of Immigration Appeals, in an unpublished decision, has found that the respondent's "chop shop" conviction under section 812.16 of the Florida Criminal Code is categorically a CIMT because his knowledge of the vehicles' stolen character was established by the elements of the offense of conviction. Matter of Lynch, WL 6921584 (BIA Dec. 31, 2013) (unpublished). In this case, however, Respondent was not convicted for conducting a "chop shop" activity, nor are the elements of section 714.8(11) establishing the existence and knowledge of stolen motor vehicles.



Code was proper regardless of the fact that the defendant simply concealed deficiency in store's cash receipts without obtaining any money, services, or property). Therefore, based on the Ninth Circuit precedent and Iowa state court case law, a crime committed in violation of section 714.8(11) is not inherently fraudulent. See Blanco, 518 F.3d at 719 (finding that Blanco's conviction for knowingly misrepresenting his identity, without obtaining something of value, is not a CIMT); cf. Notash v. Gonzales, 427 F.3d 693, 698 (9th Cir.2005) (holding fraud not inherent where statute "did not require an intent to deprive the United States of revenue"); Beltran-Tirado v. INS, 213 F.3d 1179, 1183-84 (9th Cir. 2000) (finding that convictions for making a false attestation on an employment verification form and using a false Social Security number do not constitute CIMT's); Hirsch v. INS, 308 F.2d 562, 567 (9th Cir.1962) (holding that a conviction for willfully and knowingly making false and fraudulent statements on a shipper's export declaration did not constitute a crime involving moral turpitude).

A comparison of the Iowa statute with section 10802 of the California Vehicle Code (CVC), the most analogous California statute, sheds further light on the key element of intent to receive a tangible gain. Section 10802 of the CVC applies to "[a]ny person who knowingly alters...or removes vehicle identification numbers, with the *intent to misrepresent the identity or prevent the identification* of motor vehicles or motor vehicle parts, *for the purpose of sale, transfer, import, or export*" (emphasis added). See Cal. Veh. Code § 10802. Section 10802 of the CVC therefore includes "intent to misrepresent the identity or prevent identification" for the purpose of gaining something tangible. See id. In contrast, the Iowa statute does not include any intent beyond the "conceal[ment] or misrepresent[ation]" itself. See I.C.A. § 714.8(11). Thus, on its face, the Iowa statute punishes conduct that is not necessarily performed to gain something tangible. Because section 714.8(11) of the Iowa Criminal Code does not include an element of intent to defraud, and does not require an individual to gain something tangible in order to be convicted, Respondent's conviction is not categorically a CIMT.

Based on the foregoing, the "categorical" inquiry does not resolve the question at hand. Nevertheless, the Court cannot proceed to a "modified categorical" approach unless a statute is "divisible," comprising of "multiple, alternative versions of the crime." Descamps, 133 S.Ct. at 2284. Here, section 714.8(11) of the Iowa Criminal Code does not match a crime involving moral turpitude because it is missing the key elements of intent to defraud or intent to receive a tangible gain. Furthermore, it has a single, "indivisible set of elements" and does not contain alternative versions of the crime,<sup>4</sup> therefore the Court may not proceed to a modified categorical approach. See id. at 2281-82, 2283. As a result, Respondent's conviction does not constitute a CIMT under section 237(a)(2)(A)(i) of the INA.

Accordingly, the following orders will be entered by the Court:

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<sup>4</sup> Section 714.8(11) of the Iowa Criminal Code is not a multi-sectioned statute that is divisible into several crimes, as "conceal or misrepresent" are part of a generic definition of the crime of fraud. See Black's Law Dictionary 413, 670 (7th ed. 1999) (defining fraud as "a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment"); Matter of Hernandez, WL 2825200 (BIA Aug. 31, 2007) (unpublished) (utilizing the same definition).

**ORDERS**

**IT IS HEREBY ORDERED** that Respondent's charge under section 237(a)(2)(A)(i) of the INA be **DISMISSED**.

**IT IS FURTHER ORDERED** that removal proceedings are hereby **TERMINATED**.

**Date:** 3/12/14

  
\_\_\_\_\_  
**Christine A. Bither**  
**Immigration Judge**

**Appeal Rights:** Both Parties have the right to appeal the decision in this case. Any appeal is due at the Board of Immigration Appeals within thirty (30) calendar days of service of this decision. 8 C.F.R. § 1003.38.