Board of Immigration Appeals BIA Precedent Chart

Arriving Aliens

Matter of Silitonga, 25 I&N Dec. 89 (BIA 2009)

Under 8 C.F.R. Â§Â§ 245.2(a)(1) and 1245.2(a)(1)(ii) (2009), Immigration Judges have no jurisdiction to adjudicate an application filed by an arriving alien seeking adjustment of status, with the limited exception of an alien who has been placed in removal proceedings after returning to the United States pursuant to a grant of advance parole to pursue a previously filed application.

Matter of Yauri, 25 I&N Dec. 103 (BIA 2009)

(1) With a narrow exception not applicable to this case, the United States Citizenship and Immigration Services ("USCIS") has exclusive jurisdiction to adjudicate an arriving alien's application for adjustment of status under 8 C.F.R. Â§245.2(a)(1) (2009) and agrees that it retains jurisdiction to adjudicate the application even where an unexecuted administratively final order of removal remains outstanding.

(2) The Board of Immigration Appeals generally lacks authority to reopen the proceedings of aliens under final orders of exclusion, deportation, or removal who seek to pursue relief over which the Board and the Immigration Judges have no jurisdiction, especially where reopening is sought simply as a mechanism to stay the final order while the collateral matter is resolved by the agency or court having jurisdiction to do so.

(3) With regard to untimely or number-barred motions to reopen, the Board will not generally exercise its discretion to reopen proceedings sua sponte for an arriving alien to pursue adjustment of status before the USCIS.

Child Status Protection Act

Matter of Avila-Perez, 24 I&N Dec. 78 (BIA 2007)

(1) Section 201(f)(1) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1151(f)(1) (Supp. II 2002), which allows the beneficiary of an immediate relative visa petition to retain his status as a "child" after he turns 21, applies to an individual whose visa petition was approved before the August 6, 2002, effective date of the Child Status Protection Act, Pub. L. No. 107-208, 116 Stat. 927 (2002), but who filed an application for adjustment of status after that date.

(2) The respondent, whose visa petition was approved before August 6, 2002, and who filed his adjustment of status application after that date, retained his status as a child, and therefore an immediate relative, because he was under the age of 21 when the visa petition was filed on his behalf.

***Matter of Wang*, 25 I&N Dec. 28 (BIA 2009)**

The automatic conversion and priority date retention provisions of the Child Status Protection Act, Pub L. No. 107-208, 116 Stat. 927 (2002), do not apply to an alien who ages out of eligibility for an immigrant visa as the derivative beneficiary of a fourth preference visa petition, and on whose behalf a second-preference petition is later filed by a different petitioner.

Chinese Student Protection Act

***Matter of Wang*, 23 I&N Dec. 924 (BIA 2006)**

(1) An alien who entered the United States without inspection is not eligible for adjustment of status under the Chinese Student Protection Act of 1992, Pub. L. No. 102-404, 106 Stat. 1969 ("CSPA").

(2) An alien whose CSPA application for adjustment of status was denied as a result of the alien's entry without inspection may not amend or renew the application in immigration proceedings in conjunction with section 245(i) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1255(i) (2000).

Cuban Refugee Adjustment Act

***Matter of Artigas*, 23 I&N Dec. 99 (BIA 2001) (superceded by *Matter of Martinez-Montalvo*, 24 I&N Dec. 778 (BIA 2009))**

An Immigration Judge has jurisdiction to adjudicate an application for adjustment of status under the Cuban Refugee Adjustment Act of November 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161, as amended, when the respondent is charged as an arriving alien without a valid visa or entry document in removal proceedings.

***Matter of Martinez-Montalvo*, 24 I&N Dec. 778 (BIA 2009)**

Under 8 C.F.R. Â§Â§ 245.2(a)(1) and 1245.2(a)(1)(ii) (2008), Immigration Judges have no jurisdiction to adjudicate an application filed by an arriving alien seeking adjustment of status under the Cuban Refugee Adjustment Act of November 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161, as amended, with the limited exception of an alien who has been placed in removal proceedings after returning to the United States pursuant to a grant of advance parole to pursue a previously filed application.*Matter of Artigas*, 23 I&N Dec. 99 (BIA 2001), superseded.

***Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520 (BIA 2011)**

(1) Section 235(b)(1)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1225(b)(1)(A)(i) (2006), does not limit the prosecutorial discretion of the Department of Homeland Security to place arriving aliens in removal proceedings under section 240 of the Act, 8 U.S.C. Â§ 1229a (2006).

(2) The fact that an Immigration Judge has no jurisdiction over applications for adjustment of status under the Cuban Refugee Adjustment Act of November 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161, as amended, does not negate his or her jurisdiction over the removal proceedings of arriving Cuban aliens under section 240 of the Act.

Eligibility

***Matter of L-K-*, 23 I&N Dec. 677 (BIA 2004)**

(1) Under section 245(c)(2) of the Immigration and Nationality Act, 8 U.S.C. Â§Â§ 1255(c)(2) (2000), an alien who has failed to continuously maintain a lawful status since entry into the United States, other than through no fault of his own or for technical reasons, is ineligible for adjustment of status under section 245(a) of the Act.

(2) A failure to maintain lawful status is not "for technical reasons" within the meaning of section 245(c)(2) of the Act and the applicable regulations at 8 C.F.R. Â§Â§ 1245.1(d)(2)(ii) (2004), where the alien filed an asylum application while in lawful nonimmigrant status, the nonimmigrant status subsequently expired, and the asylum application was referred to the Immigration Court prior to the time the alien applied for adjustment of status.

***Matter of Villareal-Zuniga*, 23 I&N Dec. 886 (BIA 2006)**

An application for adjustment of status cannot be based on an approved visa petition that has already been used by the beneficiary to obtain adjustment of status or admission as an immigrant.

***Matter of Jara Riero and Jara Espinol*, 24 I&N Dec. 267 (BIA 2007)**

An alien seeking to establish eligibility for adjustment of status under section 245(i) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1255(i) (2000), on the basis of a marriage-based visa petition must prove that the marriage was bona fide at its inception in order to show that the visa petition was "meritorious in fact" pursuant to 8 C.F.R. Â§ 1245.10(a)(3) (2007).

***Matter of Briones*, 24 I&N Dec. 355 (BIA 2007)**

(1) Section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. Â§Â§ 1182(a)(9)(C)(i)(I) (2000), covers recidivist immigration violators, so to be inadmissible under that section, an alien must depart the United States after accruing an aggregate period of ""unlawful presence"" of more than 1 year and thereafter reenter, or attempt to reenter, the United States without being admitted. (2) Adjustment of status under section 245(i) of the Act, 8 U.S.C. Â§Â§ 1255(i) (2000), is not available to an alien who is inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

***Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010)**

An alien who is inadmissible under section 212(a)(9)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1182(a)(9)(C)(i) (2006), is ineligible for adjustment of status under section 245(i) of the Act, 8 U.S.C. Â§ 1255(i) (2006). Matter of Briones, 24 I&N Dec. 355 (BIA 2007), reaffirmed.

Matter of Castillo-Padilla, 25 I&N Dec. 257 (BIA 2010)

(1) Conditional parole under section 236(a)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1226(a)(2)(B) (2006), is a distinct and different procedure from parole under section 212(d)(5)(A) of the Act, 8 U.S.C. Â§ 1182(d)(5)(A) (2006).

(2) An alien who was released from custody on conditional parole pursuant to section 236(a)(2)(B) of the Act has not been "paroled into the United States" for purposes of establishing eligibility for adjustment of status under section 245(a) of the Act, 8 U.S.C. Â§ 1255(a) (2006).

Matter of Quilantan, 25 I&N Dec. 285 (BIA 2010)

For purposes of establishing eligibility for adjustment of status under section 245(a) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1255(a) (2006), an alien seeking to show that he or she has been "admitted" to the United States pursuant to section 101(a)(13)(A) of the Act, 8 U.S.C. Â§ 1101(a)(13)(A) (2006), need only prove procedural regularity in his or her entry, which does not require the alien to be questioned by immigration authorities or be admitted in a particular status. Matter of Areguillin, 17 I&N Dec. 308 (BIA 1980), reaffirmed.

Matter of C-J-H-, 26 I&N Dec. 2014 (BIA 2014)

An alien whose status has been adjusted from asylee to lawful permanent resident cannot subsequently readjust status under section 209(b) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1159(b) (2012).

Fiancees

Matter of SESAY, 25 I&N Dec. 431 (BIA 2011)

(1) Under section 245(d) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1255(d) (2006), a fiancé(e) visa holder can only adjust status based on the marriage to the fiancé(e) petitioner. *Matter of Zampetis*, 14 I&N Dec. 125 (Reg. Comm'r 1972), superseded.

(2) A fiancé(e) visa holder whose bona fide marriage to the fiancé(e) visa petitioner is more than 2 years old at the time the adjustment application is adjudicated is not subject to the provisions for conditional resident status under section 216 of the Act, 8 U.S.C. Â§ 1186a (2006).

(3) A fiancé(e) visa holder satisfies the visa eligibility and visa availability requirements of section 245(a) of the Act on the date he or she is admitted to the United States as a K-1 nonimmigrant, provided that the fiancé(e) enters into a bona fide marriage with the fiancé(e) petitioner within 90 days.

(4) A fiancé(e) visa holder may be granted adjustment of status under sections 245(a) and (d) of the Act, even if the marriage to the fiancé(e) visa petitioner does not exist at the time that the adjustment application is adjudicated, if the applicant can demonstrate that he or she entered into a bona fide marriage within the 90-day period to the fiancé(e) visa petitioner.

***Matter of Le*, 25 I&N Dec. 541 (BIA 2011)**

A derivative child of a nonimmigrant fiancé(e) visa holder under section 101(a)(15)(K)(iii) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(15)(K)(iii) (2006), is not ineligible for adjustment of status simply by virtue of having turned 21 after admission to the United States on a K-2 nonimmigrant visa.

K-4 Visa Entrants

***Matter of Valenzuela*, 25 I&N Dec. 867 (BIA 2012)**

An alien who is admitted to the United States in K-4 nonimmigrant status may only adjust his or her status to that of a lawful permanent resident based on the Petition for Alien Relative (Form I-130) filed by the United States citizen K visa petitioner.

***Matter of Akram*, 25 I&N Dec. 874 (BIA 2012)**

(1) An alien who was admitted to the United States as a K-4 nonimmigrant may not adjust status without demonstrating immigrant visa eligibility and availability as the beneficiary of a Petition for Alien Relative (Form I-130) filed by his or her stepparent, the United States citizen K visa petitioner.

(2) A K-4 derivative child of a K-3 nonimmigrant who married the United States citizen K visa petitioner after the K-4 reached the age of 18 is ineligible for adjustment of status because he or she cannot qualify as the petitioner's "stepchild."

Rescission of Adjustment of Status

***Matter of Masri*, 22 I&N Dec. 1145 (BIA 1999)**

(1) The Immigration Judge and the Board of Immigration Appeals have jurisdiction over proceedings conducted pursuant to section 246 of the Immigration and Nationality Act, 8 U.S.C. Â§1256 (Supp. II 1996), to rescind adjustment of status granted under section 210 of the Act, 8 U.S.C. Â§1160 (1988 & Supp. II 1990).

(2) Information provided in an application to adjust an alien's status to that of a lawful temporary resident under section 210 of the Act is confidential and prohibited from use in rescission proceedings under section 246 of the Act, or for any purpose other than to make a determination on an application for lawful temporary residence, to terminate such temporary residence, or to prosecute the alien for fraud during the time of application.

***Matter of Cruz de Ortiz*, 25 I&N Dec. 601 (BIA 2011)**

Because section 246(a) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1256(a) (2006), relates only to proceedings to rescind lawful permanent resident status acquired through adjustment of status, the 5-year statute of limitations in that section is not applicable to bar the removal of an alien who was admitted to the United States with an immigrant visa. Garcia v. Attorney General of the United States, 553 F.3d 724 (3d Cir. 2009), distinguished.

Section 245(i) Adjustment

Matter of Fesale, 21 I&N Dec. 114 (BIA 1995)

(1) The remittance required by section 245(i) of the Immigration and Nationality Act, 8 U.S.C. Â§1255(i) (1994), added by the Department of Commerce, Justice, and State Appropriations Act for 1995, Pub. L. No. 103-317, 108 Stat. 1724, 1765, equalling five times the processing fee for an application for adjustment of status, is by definition a statutorily mandated "sum," and a requirement separate and apart from the fee which federal regulations at 8 C.F.R. Â§ 103.7 (1995) require an alien to pay when filing an application for adjustment of status under section 245 of the Act.

(2) The statutorily mandated sum required by section 245(i) of the Act cannot be waived by an Immigration Judge under the "fee waiver" provisions of 8 C.F.R. Â§Â§ 3.24 and 103.7 (1995), based on a showing of an alien's indigency.

Matter of Alania-Martin, 25 I&N Dec. 231 (BIA 2010)

Aliens who are otherwise eligible to adjust status under section 245(i) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1255(i) (2006), are not subject to the unauthorized employment restrictions of sections 245(c) and the exception for such employment in section 245(k) that apply to applications for adjustment of status under section 245(a).

Matter of Ilic, 25 I&N Dec. 717 (BIA 2012)

For an alien to independently qualify for adjustment of status under section 245(i) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1255(i) (2006), as a derivative grandfathered alien, the principal beneficiary of the qualifying visa petition must satisfy the requirements for grandfathering, including the physical presence requirement of section 245(i)(1)(C) of the Act, if applicable.

Matter of Lemus, 25 I&N Dec. 734 (BIA 2012)

Adjustment of status under section 245(i) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1255(i) (2006), is unavailable to an alien who is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. Â§ 1182(a)(9)(B)(i)(II) (2006), absent a waiver. Matter of Lemus, 24 I&N Dec. 373 (BIA 2007), clarified.

Matter of Butt, 26 I&N Dec. 108 (BIA 2013)

(1) For purposes of establishing eligibility for adjustment of status under section 245(i) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1255(i) (2006), an alien seeking to be "grandfathered" must be the beneficiary of an application for labor certification that was "approvable when filed."

(2) An alien will be presumed to be the beneficiary of a "meritorious in fact" labor certification if the application was "properly filed" and "non-frivolous" and if no apparent bars to approval of the labor certification existed at the time it was filed.

ADMINISTRATIVE CLOSURE OF CASES

Matter of Morales, 21 I&N Dec. 130 (BIA 1995, 1996)

(1) Where an alien in exclusion or deportation proceedings requests administrative closure pursuant to the settlement agreement set forth in American Baptist Churches et al. v. Thornburgh, 760 F. Supp. 797 (N.D.Cal.1991) ("ABC agreement"), the function of the Executive Office for Immigration Review ("EOIR") is restricted to the inquiries required under paragraph 19 of the agreement, i.e., (1) whether an alien is a class member, (2) whether he has been convicted of an aggravated felony, and (3) whether he poses one of the three safety concerns enumerated in paragraph 17.

(2) If a class member requesting administrative closure under the ABC agreement has not been convicted of an aggravated felony and does not fall within one of the three listed categories of public safety concerns under paragraph 17 of the agreement, EOIR must administratively close the matter to afford the alien the opportunity to pursue his rights in a special proceeding before the Immigration and Naturalization Service.

(3) If the applicant is subsequently found ineligible for the benefits of the ABC agreement in the nonadversarial proceeding before the asylum officer, or if he is denied asylum after a full de novo hearing, the Service may reinstitute exclusion or deportation proceedings by filing a motion with the Immigration Judge to recalendar the case, and such motion need only show, through evidence of an asylum officer's decision in the matter, that the class member's rights under paragraph 2 of the agreement have been exercised.

(4) Neither the Board of Immigration Appeals nor the Immigration Judges will review the Service's eligibility determinations under paragraph 2 of the ABC agreement.

Matter of Gutierrez, 21 I&N Dec. 479 (BIA 1996)

(1) Administrative closure of a case is used to temporarily remove the case from an Immigration Judge's calendar or from the Board of Immigration Appeal's docket. A case may not be administratively closed if opposed by either of the parties. Administrative closing of a case does not result in a final order. It is merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations.

(2) The settlement agreement underAmerican Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D.Cal.1991) ("ABC"), specifically states that nothing in the agreement shall limit the right of a class member to pursue other legal rights to which he or she might be entitled under the Immigration and Nationality Act. This language is mandatory and does not indicate that such action by an alien would be curtailed by the administrative closing of each class member's case or postponed until the eventual final resolution of each class member's remedies under the settlement agreement itself.

(3) An ABC alien's right to apply for relief from deportation is not prohibited due to the administrative closure of his or her case. Such an alien, therefore, may file a motion to reopen with the administrative body which administratively closed his or her case in order to pursue issues or relief from deportation which were not raised in the administratively closed proceedings. Such motion must comply with all applicable regulations in order for the alien's case to be reopened.

(4) An alien who has had his or her case reopened and who receives an adverse decision from an Immigration Judge in the reopened proceedings must file an appeal of that new decision, in accordance with applicable regulations, in order to vest the Board with jurisdiction to review the Immigration Judge's decision on the issues raised in the reopened proceedings. That appeal would be a separate and independent appeal from any previously filed appeal and would not be consolidated with an appeal before the Board regarding issues which have been administratively closed.

(5) Any appeal pending before the Board regarding issues or forms of relief from deportation which have been administratively closed by the Board prior to the reopening of the alien's proceedings will remain administratively closed. A motion to reinstate an appeal is required before issues which have been administratively closed can be considered by the Board.

Matter of Avetisyan, 25 I&N Dec. 688 (BIA 2012)

(1) Pursuant to the authority delegated by the Attorney General and the responsibility to exercise that authority with independent judgment and discretion, the Immigration Judges and the Board may administratively close removal proceedings, even if a party opposes, if it is otherwise appropriate under the circumstances. Matter of Gutierrez, 21 I&N Dec. 479 (BIA 1996), overruled.

(2) In determining whether administrative closure of proceedings is appropriate, an Immigration Judge or the Board should weigh all relevant factors, including but not limited to: (1) the reason administrative closure is sought; (2) the basis for any opposition to administrative closure; (3) the likelihood the respondent will succeed on any petition, application, or other action he or she is pursuing outside of removal proceedings; (4) the anticipated duration of the closure; (5) the responsibility of either party, if any, in contributing to any current or anticipated

delay; and (6) the ultimate outcome of removal proceedings (for example, termination of the proceedings or entry of a removal order) when the case is recalendared before the Immigration Judge or the appeal is reinstated before the Board.

ADMISSION / ENTRY

Adjustment of Status

Matter of Koljenovic, 25 I&N Dec. 219 (BIA 2010)

An alien who entered the United States without inspection and later obtained lawful permanent resident status through adjustment of status has "previously been admitted to the United States as an alien lawfully admitted for permanent residence" and must therefore satisfy the 7-year continuous residence requirement of section 212(h) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1182(h) (2006), to be eligible for a waiver of inadmissibility.

Matter of Quilantan, 25 I&N Dec. 285 (BIA 2010)

For purposes of establishing eligibility for adjustment of status under section 245(a) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1255(a) (2006), an alien seeking to show that he or she has been "admitted" to the United States pursuant to section 101(a)(13)(A) of the Act, 8 U.S.C. Â§ 1101(a)(13)(A) (2006), need only prove procedural regularity in his or her entry, which does not require the alien to be questioned by immigration authorities or be admitted in a particular status. Matter of Areguillin, 17 I&N Dec. 308 (BIA 1980), reaffirmed.

Matter of Espinosa Guillot, 25 I&N Dec. 653 (BIA 2011)

An alien who has adjusted status to that of a lawful permanent resident pursuant to the Cuban Refugee Adjustment Act of November 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161, as amended, has been admitted to the United States and is subject to charges of removability under section 237(a) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1227(a) (2006).

Matter of Chavez-Alvarez, 26 I&N Dec. 274 (BIA 2014)

(1) Adjustment of status constitutes an "admission" for purposes of determining an alien's removability under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1227(a)(2)(A)(iii) (2012), as an alien convicted of an aggravated felony "at any time after admission." Matter of Rosas, 22 I&N Dec. 616 (BIA 1999), reaffirmed.

(2) An element listed in a specification in the Manual for Courts-Martial ("MCM"), which must be pled and proved beyond a reasonable doubt, is the functional equivalent of an "element" of a criminal offense for immigration purposes.

(3) The crime of sodomy by force in violation of article 125 of the Uniform Code of Military Justice, 10 U.S.C. Â§ 925 (2000), and the Punitive Articles of the MCM relating to sodomy, is a crime of violence under 18 U.S.C. Â§ 16 (2012) within the definition of an aggravated felony under section 101(a)(43)(F) of the Act, 8 U.S.C. Â§ 1101(a)(43)(F)(2012).

***Matter of J-H-J-*, 26 I&N Dec. 563 (BIA 2015)**

An alien who adjusted status in the United States, and who has not entered as a lawful permanent resident, is not barred from establishing eligibility for a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) (2012), as a result of an aggravated felony conviction. Matter of E.W. Rodriguez, 25 I&N Dec. 784 (BIA 2012), and Matter of Koljenovic, 25 I&N Dec. 219 (BIA 2010), withdrawn.

Arriving Alien

***Matter of Oseiwusu*, 22 I&N Dec. 19 (BIA 1998)**

(1) An alien who arrives in the United States pursuant to a grant of advance parole is an "arriving alien," as that term is defined in the federal regulations.

(2) According to the regulations, an Immigration Judge has no authority over the apprehension, custody, and detention of arriving aliens and is therefore without authority to consider the bond request of an alien returning pursuant to a grant of advance parole.

***Matter of R-D-*, 24 I&N Dec. 221 (BIA 2007)**

(1) An alien who leaves the United States and is admitted to Canada to seek refugee status has made a departure from the United States.

(2) An alien returning to the United States after the denial of an application for refugee status in Canada is seeking admission into the United States and is therefore an arriving alien under 8 C.F.R. Â§ 1001.1(q) (2007).

***Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520 (BIA 2011)**

(1) Section 235(b)(1)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1225(b)(1)(A)(i) (2006), does not limit the prosecutorial discretion of the Department of Homeland Security to place arriving aliens in removal proceedings under section 240 of the Act, 8 U.S.C. Â§ 1229a (2006).

(2) The fact that an Immigration Judge has no jurisdiction over applications for adjustment of status under the Cuban Refugee Adjustment Act of November 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161, as amended, does not negate his or her jurisdiction over the removal proceedings of arriving Cuban aliens under section 240 of the Act.

Asylees

***Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013)**

(1) A grant of asylum is not an "admission" to the United States under section 101(a)(13)(A) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(13)(A) (2006).

(2) When termination of an alien's asylum status occurs in conjunction with removal proceedings pursuant to 8 C.F.R. Â§ 1208.24 (2013), the Immigration Judge should ordinarily make a threshold determination regarding the termination of asylum status before resolving issues of removability and eligibility for relief from removal.

(3) An adjudication of "youthful trainee" status pursuant to section 762.11 of the Michigan Compiled Laws is a "conviction" under section 101(a)(48)(A) of the Act because such an adjudication does not correspond to a determination of juvenile delinquency under the Federal Juvenile Delinquency Act, 18 U.S.C. Â§Â§ 5031-5042 (2006). Matter of Devison, 22 I&N Dec. 1362 (BIA 2000), followed.

Cancellation of Removal (Non-LPR)

***Matter of Reza-Murillo*, 25 I&N Dec. 296 (BIA 2010)**

A grant of Family Unity Program benefits does not constitute an "admission" to the United States under section 101(a)(13)(A) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(13)(A) (2006), for purposes of establishing that an alien has accrued the requisite 7-year period of continuous residence after having been "admitted in any status" to be eligible for cancellation of removal under section 240A(a)(2) of the Act, 8 U.S.C. Â§ 1229b(a)(2) (2006).

***Matter of Fajardo-Espinoza*, 26 I&N Dec. 603 (BIA 2015)**

A grant of Family Unity Program benefits does not constitute an "admission" to the United States under section 101(a)(13)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(13)(A) (2012), for purposes of establishing that an alien has accrued the requisite 7 years of continuous residence after having been "admitted in any status" to be eligible for cancellation of removal under section 240A(a)(2) of the Act, 8 U.S.C. § 1229b(a)(2) (2012). *Matter of Reza*, 25 I&N Dec. 296 (BIA 2010), reaffirmed. *Garcia-Quintero v. Gonzales*, 455 F.3d 1006 (9th Cir. 2006), not followed.

Claimed Status Review

***Matter of Lujan-Quintana*, 25 I&N Dec. 53 (BIA 2009)**

The Board of Immigration Appeals lacks jurisdiction to review an appeal by the Department of Homeland Security of an Immigration Judge's decision to vacate an expedited removal order after a claimed status review hearing pursuant to 8 C.F.R. Â§ 1235.3(b)(5)(iv) (2009), at which the Immigration Judge determined the respondent to be a United States citizen.

Conditional Permanent Residents

***Matter of Paek*, 26 I&N Dec. 403 (BIA 2014)**

An alien who was admitted to the United States at a port of entry as a conditional permanent resident pursuant to section 216(a) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1186a(a) (2012), is an alien "lawfully admitted for permanent residence" who is barred from establishing eligibility for a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. Â§ 1182(h) (2012), if he or she was subsequently convicted of an aggravated felony.

False Claim of U.S. Citizenship

***Matter of Pinzon*, 26 I&N Dec. 189 (BIA 2013)**

(1) An alien who enters the United States by falsely claiming United States citizenship is not deemed to have been inspected by an immigration officer, so the entry is not an "admission" under section 101(a)(13)(A) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(13)(A) (2012).

(2) The offense of knowingly and willfully making any materially false, fictitious, or fraudulent statement to obtain a United States passport in violation of 18 U.S.C. Â§ 1001(a)(2) (2006) is a crime involving moral turpitude.

Nunc Pro Tunc Permission to Reapply

***Matter of Garcia*, 21 I&N Dec. 254 (BIA 1996)**

(1) Nunc pro tunc permission to reapply for admission, an administrative practice not expressly authorized by statute, is available only in the limited circumstances where a grant of such relief would effect a complete disposition of the case, i.e., where the only ground of deportability or inadmissability would be eliminated or where the alien would receive a grant of adjustment of status in conjunction with the grant of any appropriate waivers of inadmissability.

(2) A grant of nunc pro tunc permission to reapply for admission is not available to a respondent who, in spite of such a grant, would remain deportable under sections 241(a)(2)(A)(iii) and (B)(i) of the Immigration and Nationality Act, 8 U.S.C. Â§Â§ 1251(a)(2)(A)(iii) and (B)(i) (1994), as a result of a drug-related conviction.

(3) An alien who returned to the United States following deportation with a visa, but without obtaining advance permission to reapply, is not eligible to apply for nunc pro tunc permission to reapply for admission in conjunction with an application for a waiver of inadmissibility under section 212(c) of the Act, 8 U.S.C. Â§ 1182(c) (1994), because he is not independently eligible for the waiver as a result of his unlawful entry.

Returning Lawful Permanent Resident

***Matter of Collado*, 21 I&N Dec. 1061 (BIA 1998)**

(1) A lawful permanent resident of the United States described in sections 101(a)(13)(C)(I)-(vi) of the Immigration and Nationality Act (to be codified at 8 U.S.C. Â§ 1101(a)(13)(C)(i)-(vi)) is to be regarded as "seeking an admission into the United States for purposes of the immigration laws," without further inquiry into the nature and circumstances of a departure from and return to this country.

(2) The Immigration Judge erred in finding that theFleuti doctrine, first enunciated by the United States Supreme Court inRosenberg v. Fleuti, 374 U.S. 449 (1963), requires the admission into the United States of a returning lawful permanent resident alien who falls within the definition of section 101(a)(13)(C)(v) of the Act, if that alien's departure from the United States was "brief, casual, and innocent."

***Matter of Rivens*, 25 I&N Dec. 623 (BIA 2011)**

(1) In order to establish that a returning lawful permanent resident alien is to be treated as an applicant for admission to the United States, the Department of Homeland Security has the burden of proving by clear and convincing evidence that one of the six exceptions to the general rule for lawful permanent residents set forth at section 101(a)(13)(C) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(13)(C) (2006), applies.

(2) The offense of accessory after the fact is a crime involving moral turpitude, but only if the underlying offense is such a crime.

***Matter of Valanzuela-Felix*, 26 I&N Dec. 53 (BIA 2012)**

When the Department of Homeland Security paroles a returning lawful permanent resident for prosecution, it need not have all the evidence to sustain its burden of proving that the alien is an applicant for admission but may ordinarily rely on the results of a subsequent prosecution to meet that burden in later removal proceedings.

***Matter of Pena*, 26 I&N Dec. 613 (BIA 2015)**

An alien returning to the United States who has been granted lawful permanent resident status cannot be regarded as seeking an admission and may not be charged with inadmissibility under section 212(a) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a) (2012), if he or she does not fall within any of the exceptions in section 101(a)(13)(C) of the Act, 8 U.S.C. § 1101(a)(13)(C) (2012). *Matter of Koloamatangi*, 23 I&N Dec. 548 (BIA 2003), distinguished.

Unlawful Reentry

***Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006)**

(1) An alien who reenters the United States without admission after having previously been removed is inadmissible under section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1182(a)(9)(C)(i)(II) (2000), even if the alien obtained the Attorney General's permission to reapply for admission prior to reentering unlawfully.

(2) An alien is statutorily ineligible for a waiver of inadmissibility under the first sentence of section 212(a)(9)(C)(ii) of the Act unless more than 10 years have elapsed since the date of the alien's last departure from the United States.*Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)

***Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)**

(1) To be rendered inadmissible for 10 years pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act, 8 U.S.C Â§ 1182(a)(9)(B)(i)(II) (2000), an alien must depart the United States after having been unlawfully present in the United States for 1 year or longer.

(2) Pursuant to sections 301(b)(3) and 309(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 3009-578, 309-625, no period of an alien's presence in the United States prior to April 1, 1997, may be considered "unlawful presence" for purposes of determining an alien's inadmissibility under section 212(a)(9)(B) of the Act.

***Matter of Briones*,, 24 I&N Dec. 355 (BIA 2007)**

(1) Section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. Â§Â§ 1182(a)(9)(C)(i)(I) (2000), covers recidivist immigration violators, so to be inadmissible under that section, an alien must depart the United States after accruing an aggregate period of ""unlawful presence"" of more than 1 year and thereafter reenter, or attempt to reenter, the United States without being admitted.

(2) Adjustment of status under section 245(i) of the Act, 8 U.S.C. Â§Â§ 1255(i) (2000), is not available to an alien who is inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

***Matter of Lemus*, 24 I&N Dec. 373 (BIA 2007)**

(1) An alien who is unlawfully present in the United States for a period of 1 year, departs the country, and then seeks admission within 10 years of the date of his departure from the United States, is inadmissible under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act, 8 U.S.C. Â§Â§ 1182(a)(2)(B)(i)(II) (2000), even if the alien"s departure was not made pursuant to an order of removal and was not a voluntary departure in lieu of being subject to removal proceedings or at the conclusion of removal proceedings.

(2) Adjustment of status under section 245(i) of the Act, 8 U.S.C. Â§Â§ 1255(i) (2000), is unavailable to an alien who is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Withdrawal of Application for Admission

***Matter of Sanchez*, 21 I&N Dec. 444 (BIA 1996)**

(1) under the present statutory and regulatory scheme, an Immigration Judge properly declined to order an alien excluded in absentia where the Immigration and Naturalization Service did not detain or parole the alien at the time he applied for admission to the United States, but instead returned him to Mexico with instructions to appear for an exclusion hearing at a later date.

(2) By directing an applicant for admission to return to Mexico after being served with a Notice to Applicant for Admission Detained for Hearing before an Immigration Judge (Form I-122), the Service in effect consented to the alien's withdrawal of that application when the alien elected not to return to pursue his application for admission to

the United States.

AGGRAVATED FELONIES

Accessory After the Fact

Matter of Batista, 21 I&N Dec. 955 (BIA 1997)

(1) The offense of accessory after the fact to a drug-trafficking crime, pursuant to 18 U.S.C. Â§ 3 (Supp. V 1993), is not considered an inchoate crime and is not sufficiently related to a controlled substance violation to support a finding of deportability pursuant to section 241(a)(2)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1251(a)(2)(B)(i) (1994).

(2) The respondent's conviction pursuant to 18 U.S.C. Â§ 3 establishes his deportability as an alien convicted of an aggravated felony under section 241(a)(2)(A)(iii) of the Act,because the offense of accessory after the fact falls within the definition of an obstruction of justice crime under section 101(a)(43)(S) of the Act, 8 U.S.C.A. Â§1101(a)(43)(S) (West Supp. 1997), and because the respondent's sentence, regardless of any suspension of the imposition or execution of that sentence, "is at least one year."

Adjustment of Status

Matter of Rosas, 22 I&N Dec. 616 (BIA 1999)

An alien whose conviction for an aggravated felony was subsequent to her adjustment of status to that of a lawful permanent resident is deportable under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1227(a)(2)(A)(iii) (Supp. II 1996), as an alien who was convicted of an aggravated felony "after admission.@

Alien Smuggling

Matter of Alvarado-Alvino, 22 I&N Dec. 718 (BIA 1999)

An alien convicted of an offense described in section 275(a) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1325 (Supp. II 1996), is not convicted of an aggravated felony as that term is defined in section 101(a)(43)(N) of the Act, 8 U.S.C. Â§ 1101(a)(43)(N) (Supp. II 1996), which specifically refers to those offenses relating to alien smuggling described in sections 274(a)(1)(A) and (2) of the Act, 8U.S.C. Â§ 1324(a)(1)(A) and (2) (Supp. II 1996).

Arson

Matter of Palacios, 22 I&N Dec. 434 (BIA 1998)

An alien who was convicted of arson in the first degree under the law of Alaska and sentenced to 7 years' imprisonment with 3 years suspended was convicted of a "crime of violence" within the meaning of section 101(a)(43)(F) of the Immigration and Nationality Act, 8U.S.C. Â§1101(a)(43)(F) (Supp. II 1996), and therefore is deportable

under section 237(a)(2)(A)(iii) of the Act, 8 U.S.C. Â§1227(a)(2)(A)(iii) (Supp. II 1996), as an alien convicted of an aggravated felony.

***Matter of Bautista*, 25 I&N Dec. 616 (BIA 2011)**

Attempted arson in the third degree in violation of sections 110 and 150.10 of the New York Penal Law is an aggravated felony under section 101(a)(43)(E)(i) of the Immigration and Nationality Act, 8U.S.C. Â§ 1101(a)(43)(E)(i) (2006), even though the State crime lacks the jurisdictional element in the applicable Federal arson offense. Matter of Vasquez-Muniz, 23 I&N Dec. 207 (BIA 2002), followed.

Burglary

***Matter of Perez*, 22 I&N Dec. 1325 (BIA 2000) (Burglary of a Vehicle)**

The offense of burglary of a vehicle in violation of section 30.04(a) of the Texas Penal Code Annotated is not a "burglary offense" within the definition of an aggravated felony in section 101(a)(43)(G) of the Immigration and Nationality Act, 8 U.S.C. Â§1101(a)(43)(G) (Supp. IV 1998).

Commercial Bribery

***Matter of Gruenangerl*, 25 I&N Dec. 351 (BIA 2010)**

The crime of bribery of a public official in violation of 18 U.S.C. Â§ 201(b)(1)(A) (2006) is not an offense "relating to" commercial bribery and is therefore not an aggravated felony under section 101(a)(43)(R) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(R) (2006).

Conspiracy

***Matter of Richardson*, 25 I&N Dec. 226 (BIA 2010)**

(1) The term "conspiracy" in section 101(a)(43)(U) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(U) (2006), is not limited to conspiracies that require the commission of an overt act in furtherance of the conspiracy by one of the conspirators.

(2) An alien who was only convicted of conspiracy to commit an aggravated felony and is removable on the basis of that conviction under section 101(a)(43)(U) of the Act may not also be found removable for the underlying substantive offense, even though the record of conviction shows that the conspirators actually committed the substantive offense.

Controlled Substances

***Matter of L-G-*, 21 I&N Dec. 89 (BIA 1995) (modified by *Matter of Yanez*, 23 I&N Dec. 390 (BIA 2002)**

(1) A federal definition applies to determine whether or not a crime is a "felony" within the meaning of 18 U.S.C. Â§ 924(c)(2) (1994), and therefore is an "aggravated felony" under section 101(a)(43) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43) (Supp. V 1993).

(2) For immigration purposes, a state drug offense qualifies as a "drug trafficking crime" under 18 U.S.C. Â§ 924(c)(2) if it is punishable as a felony under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).Matter of Davis, 20 I&N Dec. 536 (BIA 1992), andMatter of Barrett, 20 I&N Dec. 171 (BIA 1990), reaffirmed.

(3) Although we disagree with the decision of the United States Court of Appeals for the Second Circuit inJenkins v. INS, 32 F.3d 11 (2d Cir. 1994), which holds that an alien's state conviction for a drug offense that is a felony under state law, but a misdemeanor under federal law, qualifies as a conviction for an aggravated felony, we will follow this decision in matters arising within the Second Circuit's jurisdiction.

***Matter of K-V-D-*, 22 I&N Dec. 1163 (BIA 1999) (overruled by *Matter of Yanez*, 23 I&N Dec. 390 (BIA 2002)**

(1) Where a circuit court of appeals has interpreted the definition of an "aggravated felony" under section 101(a)(43) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43) (1994), only for purposes of criminal sentence enhancement, the Board of Immigration Appeals may interpret the phrase differently for purposes of implementing the immigration laws in cases arising within that circuit.

(2) An alien convicted in Texas of simple possession of a controlled substance, which would be a felony under Texas law but a misdemeanor under federal law, is not convicted of an aggravated felony within the meaning of section 101(a)(43)(B) of the Act.Matter of L-G-, 21 I&N Dec. 89 (BIA 1995), affirmed.*Matter of Yanez*, 23 I&N Dec. 390 (BIA 2002)

The determination whether a state drug offense constitutes a "drug trafficking crime" under 18 U.S.C. Â§ 924(c)(2) (2000), such that it may be considered an "aggravated felony" under section 101(a)(43)(B) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(B) (2000), shall be made by reference to decisional authority from the federal circuit courts of appeals, and not by reference to any separate legal standard adopted by the Board of Immigration Appeals.Matter of K-V-D-, 22 I&N Dec. 1163 (BIA 1999), overruled.Matter of L-G-, 21 I&N Dec. 89 (BIA 1995), andMatter of Davis, 20 I&N Dec. 536 (BIA 1992), modified.

***Matter of Santos-Lopez*, 23 I&N Dec. 419 (BIA 2002)**

(1) Under the decisions of the United States Court of Appeals for the Fifth Circuit inUnited States v. Hernandez-Avalos, 251F.3d 505 (5th Cir.), cert. denied, 122S.Ct. 305 (2001), andUnited States v. Hinojosa-Lopez, 130F.3d 691 (5th Cir. 1997), a determination whether an offense is a "felony" for purposes of 18U.S.C. Â§924(c)(2) (2000)

depends on the classification of the offense under the law of the convicting jurisdiction.Matter of Yanez, 23I&N Dec. 390 (BIA 2002), followed.

(2) Each of the respondent's two convictions for possession of marihuana is classified as a misdemeanor offense under Texas law; therefore, neither conviction is for a "felony" within the meaning of 18U.S.C. Â§924(c)(2) or an "aggravated felony" within the meaning of section 101(a)(43)(B) of the Immigration and Nationality Act, 8U.S.C. Â§1101(a)(43)(B) (2000).

Matter of Elgendi, 23 I&N Dec. 515 (BIA 2002)

In accordance with authoritative precedent of the United States Court of Appeals for the Second Circuit inUnited States v. Pornes-Garcia, 171 F.3d 142 (2d Cir. 1999), andUnited States v. Polanco, 29 F.3d 35 (2d Cir. 1994), an individual who has been convicted twice of misdemeanor possession of marijuana in violation of New York State law has not been convicted of an aggravated felony under section 101(a)(43)(B) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(43)(B) (2000).

Matter of Carachuri-Rosendo, 24 I&N Dec. 382 (BIA 2007)

(1) Decisional authority from the Supreme Court and the controlling Federal circuit court of appeals is determinative of whether a State drug offense constitutes an “aggravated felony” under section 101(a)(43)(B) of the Immigration and Nationality Act, 8 U.S.C. Â§Â§ 1101(a)(43)(B) (2000), by virtue of its correspondence to the Federal felony offense of “recidivist possession,” as defined by 21 U.S.C. Â§ 844(a) (2000).Matter of Yanez, 23 I&N Dec. 390 (BIA 2002), followed.

(2) Controlling precedent of the United States Court of Appeals for the Fifth Circuit dictates that the respondent”s Texas conviction for alprazolam possession qualifies as an “aggravated felony” conviction by virtue of the fact that the underlying alprazolam possession offense was committed after the respondent’s prior State “conviction” for a “drug, narcotic, or chemical offense” became “final” within the meaning of 21 U.S.C. Â§ 844(a).

(3) Absent controlling authority regarding the “recidivist possession” issue, an alien’s State conviction for simple possession of a controlled substance will not be considered an aggravated felony conviction on the basis of recidivism unless the alien”s status as a recidivist drug offender was either admitted by the alien or determined by a judge or jury in connection with a prosecution for that simple possession offense.

Matter of Thomas, 24 I&N Dec. 416 (BIA 2007)

The respondent’s 2003 Florida offense involving the simple possession of marijuana does not qualify as an “aggravated felony” by virtue of its correspondence to the Federal felony of “recidivist possession,” even though it was committed after a prior “conviction” for a “drug, narcotic, or chemical offense” became “final” within the

meaning of 21 U.S.C. Â§ 844(a) (2000), because the respondent's conviction for that 2003 offense did not arise from a State proceeding in which his status as a recidivist drug offender was either admitted or determined by a judge or jury.Matter of Carachuri-Rosendo, 24 I&N Dec. 382 (BIA 2007), followed.

***Matter of Aruna*, 24 I&N Dec. 452 (BIA 2008)**

Absent controlling precedent to the contrary, a State law misdemeanor offense ofconspiracy to distribute marijuana qualifies as an "aggravated felony" under section>101(a)(43)(B) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(B) (2000),where its elements correspond to the elements of the Federal felony offense of conspiracy to distribute an indeterminate quantity of marijuana, as defined by 21 U.S.C. Â§Â§ 841(a)(1), (b)(1)(D), and 846 (2000 & Supp. IV 2004).

***Matter of Sanchez-Cornejo*, 25 I&N Dec. 273 (BIA 2010)**

The offense of delivery of a simulated controlled substance in violation of Texas law is not an aggravated felony, as defined by section 101(a)(43)(B) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(B) (2006), but it is a violation of a law relating to a controlled substance under former section 241(a)(2)(B)(i) of the Act, 8 U.S.C. Â§ 1251(a)(2)(B)(i) (1994).

***Matter of Castro-Rodriguez*, 25 I&N Dec. 698 (BIA 2012)**

An alien convicted of possession of marijuana with intent to distribute under State law has the burden to show that the offense is not an aggravated felony because it involved a "small amount of marihuana for no remuneration" within the meaning of 21 U.S.C. Â§ 841(b)(4) (2006), which the alien may establish by presenting evidence outside of the record of conviction. Matter of Aruna, 24 I&N Dec. 452 (BIA 2008), clarified.

***Matter of Flores*, 26 I&N Dec. 155 (BIA 2013)**

The offense of traveling in interstate commerce with the intent to distribute the proceeds of an unlawful drug enterprise in violation of 18 U.S.C. Â§ 1952(a)(1)(A) (2006) is not an "aggravated felony" under section 101(a)(43)(B) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(B) (2006), because it is neither a "drug trafficking crime" under 18 U.S.C. Â§ 924(c) (2006) nor "illicit trafficking in a controlled substance." Matter of Davis, 20 I&N Dec. 536 (BIA 1992), followed.

***Matter of L-G-H-*, 26 I&N Dec. 365 (BIA 2014)**

Sale of a controlled substance in violation of section 893.13(1)(a)(1) of the Florida Statutes, which lacks a mens rea element with respect to the illicit nature of the substance but requires knowledge of its presence and includes an affirmative defense for ignorance of its unlawful nature, is an "illicit trafficking" aggravated felony under section 101(a)(43)(B) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(B) (2012).

***Matter of Ferreira*, 26 I&N Dec. 415 (BIA 2014)**

Where a State statute on its face covers a controlled substance not included in the Federal controlled substances schedules, there must be a realistic probability that the State would prosecute conduct under the statute that falls outside the generic definition of the removable offense to defeat a charge of removability under the categorical approach.

Crimes of Violence

***Matter of Magallanes*, 22 I&N Dec. 1 (BIA 1998) (Driving Under the Influence) (overruled by *Matter of Ramos*, 23 I&N Dec. 336 (BIA 2002)**

An alien who was convicted of aggravated driving while under the influence and sentenced to 2Â½ years in prison was convicted of a "crime of violence" within the meaning of section 101(a)(43)(F) of the Immigration and Nationality Act (to be codified at 8 U.S.C. Â§1101(a)(43)(F)), and therefore is deportable under section 241(a)(2)(A)(iii) of the Act, 8 U.S.C. Â§ 1251(a)(2)(A)(iii)(1994), as an alien convicted of an aggravated felony.

***Matter of Puente*, 22 I&N Dec. 1006 (BIA 1999) (Driving Under the Influence) (overruled by *Matter of Ramos*, 23 I&N Dec. 336 (BIA 2002)**

A conviction for the crime of driving while intoxicated under section 49.04 of the Texas Penal Code, which is a felony as a result of an enhanced punishment, is a conviction for a crime of violence and therefore an aggravated felony under section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(F) (Supp. II 1996).

***Matter of Sweetser*, 22 I&N Dec. 709 (BIA 1999) (Criminally Negligent Child Abuse)**

(1) Where the state statute under which an alien has been convicted is divisible, meaning it encompasses offenses that constitute crimes of violence as defined under 18 U.S.C. Â§ 16 (1994) and offenses that do not, it is necessary to look to the record of conviction, and to other documents admissible as evidence in proving a criminal conviction, to determine whether the specific offense of which the alien was convicted constitutes an aggravated felony as defined in section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(F) (Supp. II 1996).

(2) for purposes of determining whether an offense is a crime of violence as defined in 18 U.S.C. Â§ 16(b), it is necessary to examine the criminal conduct required for conviction, rather than the consequence of the crime, to find if the offense, by its nature, involves “a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.”

(3) To find that a criminal offense is a crime of violence under 18 U.S.C. Â§ 16(b), a causal link between the potential for harm and the "substantial risk" of "physical force" being used must be present. *Matter of Magallanes*, 22 I&N Dec. 1 (BIA 1998), clarified.

(4) An alien convicted of criminally negligent child abuse under sections 18-6-401(1) and (7) of the Colorado Revised Statutes, whose negligence in leaving his stepson alone in a bathtub resulted in the child's death, was not convicted of a crime of violence under 18 U.S.C. Â§ 16(b) because there was not substantial risk that physical force "would be used in the commission of the crime."

***Matter of Aldabesheh*, 22 I&N Dec. 983 (BIA 1999) (Criminal Contempt and Forgery)**

(1) A conviction for criminal contempt in the first degree, in violation of section 215.51(b)(i) of the New York Penal Law, with a sentence to imprisonment of at least 1 year, is a conviction for a crime of violence as defined under 18 U.S.C. Â§ 16(b) (1994), thus rendering it an aggravated felony under section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. Â§1101(a)(43)(F) (Supp. II 1996).

(2) A conviction for forgery in the second degree, in violation of section 170.10(2) of the New York Penal Law, with a sentence to imprisonment of at least 1 year, is a conviction for an aggravated felony under section 101(a)(43)(R) of the Act.

(3) Where an alien has been convicted of two or more aggravated felonies and has received concurrent sentences to imprisonment, the alien's "aggregate term of imprisonment," for purposes of determining eligibility for withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. Â§1231(b)(3) (Supp. II 1996), is equal to the length of the alien's longest concurrent sentence.

***Matter of Herrera*, 23 I&N Dec. 43 (BIA 2001) (Driving Under the Influence)**

Respondent's motion for a stay of deportation, pending consideration of his simultaneously filed motion to reopen and reconsider, is granted in light of the decision of the United States Court of Appeals for the Fifth Circuit inUnited States v. Chapa-Garza, 2001 WL 209468 (5th Cir. 2001), which held that a conviction for driving while intoxicated in violation of section 49.09 of the Texas Penal Code is not a conviction for a crime of violence under section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(F) (Supp. V 1999).

***Matter of Olivares*, 23 I&N Dec. 148 (BIA 2001) (Driving Under the Influence)**

UnderUnited States v. Chapa-Garza, 243 F.3d 921 (5th Cir. 2001), andUnited States v. Hernandez-Avalos, 251 F.3d 505 (5th Cir. 2001), a Texas conviction for felony DWI is not classifiable as a crime of violence conviction under 18 U.S.C. Â§ 16(b) (1994) for purposes of removability in cases arising in the United States Court of Appeals for the Fifth Circuit; accordingly, in cases arising in the Fifth Circuit,Matter of Puente, 22 I&N Dec. 1006 (BIA 1999), will not be applied.

***Matter of Ramos*, 23 I&N Dec. 336 (BIA 2002)**

(1) In cases arising in circuits where the federal court of appeals has not decided whether the offense of driving under the influence is a crime of violence under 18U.S.C. Â§16(b) (2000), an offense will be considered a crime of violence if it is committed at least recklessly and involves a substantial risk that the perpetrator may resort to the

use of force to carry out the crime; otherwise, where the circuit court has ruled on the issue, the law of the circuit will be applied to cases arising in that jurisdiction.

(2) The offense of operating a motor vehicle while under the influence of intoxicating liquor in violation of chapter 90, section 24(1)(a)(1) of the Massachusetts General Laws is not a felony that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense and is therefore not a crime of violence.Matter of Puente, 22 I&N Dec. 1006 (BIA 1999), andMatter of Magallanes, 22 I&N Dec. 1 (BIA 1998), overruled.

***Matter of Martin*, 23 I&N Dec. 491 (BIA 2002)**

The offense of third-degree assault in violation of section 53a-61(a)(1) of the Connecticut General Statutes, which involves the intentional infliction of physical injury upon another, is a crime of violence under 18 U.S.C. Â§ 16(a) (2000) and is therefore an aggravated felony under section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. Â§1101(a)(43)(F) (2000).

***Matter of Vargas*, 23 I&N Dec. 651 (BIA 2004)**

The offense of manslaughter in the first degree in violation of section 125.20 of the New York Penal Law is a crime of violence under 18 U.S.C. Â§ 18(b) (2000) and is therefore an aggravated felony under section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(F) (2000).

***Matter of Malta*, 23 I&N Dec. 656 (BIA 2004)**

A stalking offense for harassing conduct in violation of section 646.9(b) of the California Penal Code, which proscribes stalking when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the stalking behavior, is a crime of violence under 18 U.S.C. Â§ 16(b) (2000), and is therefore an aggravated felony under section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(F) (2000).

***Matter of Perez-Ramirez*, 25 I&N Dec. 203 (BIA 2010)**

(1) Where a criminal alien's sentence has been modified to include a term of imprisonment following a violation of probation, the resulting sentence to confinement is considered to be part of the penalty imposed for the original underlying crime, rather than punishment for a separate offense. (2) An alien's misdemeanor conviction for willful infliction of corporal injury on a spouse in violation of section 273.5(a) of the California Penal Code qualifies categorically as a conviction for a "crime of violence" within the meaning of 18 U.S.C. Â§ 16(a) (2006).

***Matter of Ramon Martinez*, 25 I&N Dec. 571 (BIA 2011)**

A violation of section 220 of the California Penal Code is categorically a crime of violence under 18 U.S.C. Â§Â§ 16(a) and (b) (2006).

***Matter of Guerrero*, 25 I&N Dec. 631 (BIA 2011)**

(1) Because solicitation to commit a "crime of violence" is itself a crime of violence under 18 U.S.C. Â§ 16(b) (2006), a felony conviction for solicitation to commit assault with a dangerous weapon in violation of section 11-1-9 of the General Laws of Rhode Island is for a crime of violence and therefore an aggravated felony under section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(F) (2006), where a sentence of 1 year or more has been imposed.

(2) The offense of solicitation is not an aggravated felony under section 101(a)(43)(U) of the Act because it is not an attempt or conspiracy.

***Matter of U. Singh*, 25 I&N Dec. 670 (BIA 2012)**

(1) A decision by a Federal court of appeals reversing a precedent decision of the Board of Immigration Appeals is not binding authority outside the circuit in which the case arises.

(2) A stalking offense for harassing conduct in violation of section 646.9(b) of the California Penal Code is a crime of violence under 18 U.S.C. Â§ 16(b) (2006) and is therefore an aggravated felony under section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(F) (2006). Matter of Malta, 23 I&N Dec. 656 (BIA 2004), reaffirmed. Malta-Espinoza v. Gonzales, 478 F.3d 1080 (9th Cir. 2007), followed in jurisdiction only.

***Matter of Tavarez-Peralta*, 26 I&N Dec. 171 (BIA 2013)**

(1) An alien convicted of violating 18 U.S.C. Â§ 32(a)(5) (2006), who interfered with a police helicopter pilot by shining a laser light into the pilot's eyes while he operated the helicopter, is removable under section 237(a)(4)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1227(a)(4)(A)(ii) (2006), as an alien who has engaged in criminal activity that endangers public safety.

(2) A violation of 18 U.S.C. Â§ 32(a)(5) is not a crime of violence under 18 U.S.C. Â§ 16 (2006).

***Matter of Francisco-Alonzo*, 26 I&N Dec. 594 (BIA 2015)**

In determining whether a conviction is for an aggravated felony crime of violence under 18 U.S.C. § 16(b) (2012), the proper inquiry is whether the conduct encompassed by the elements of the offense presents a substantial risk that physical force may be used in the course of committing the offense in the "ordinary case.

***Matter of Calvillo-Garcia*, 26 I&N Dec. 697 (BIA 2015)**

A term of confinement in a substance abuse treatment facility imposed as a condition of probation pursuant to article 42.12, section 14(a) of the Texas Code of Criminal Procedure constitutes a "term of confinement" under section 101(a)(48)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(B) (2012), for purposes of determining if an offense is a crime of violence under section 101(a)(43)(F) of the Act.

Date of Conviction

Matter of Lettman, 22 I&N Dec. 365 (BIA 1998)

An alien convicted of an aggravated felony is subject to deportation regardless of the date of the conviction when the alien is placed in deportation proceedings on or after March 1, 1991, and the crime falls within the aggravated felony definition.

Matter of Truon, 22 I&N Dec. 1090 (BIA 1999)

(1) An alien whose June 8, 1987, conviction for second degree robbery was not, at the time of his conviction, included in the aggravated felony definition was not deportable, even after that offense was included in the aggravated felony definition as a crime of violence under the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, due to its provisions regarding effective dates; however, the alien became deportable upon enactment of section 321(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 3009-628 (enacted Sept. 30, 1996) ("IIRIRA"), because that section established an aggravated felony definition that is to be applied without temporal limitations, regardless of the date of conviction.

(2) The term "actions taken" in section 321(c) of the IIRIRA, 110 Stat. at 3009-628, which limits the applicability of the aggravated felony definition of section 321(b), includes consideration of a case by the Board of Immigration Appeals; therefore that section's aggravated felony definition is applicable to cases decided by the Board on or after the IIRIRA's September 30, 1996, enactment date.

(3) The Attorney General's decision inMatter of Soriano, 21 I&N Dec. 516 (BIA 1996; A.G. 1997), remains binding on the Board, notwithstanding decisions in some courts of appeals that have rejected that decision.

Divisible Statutes

Matter of Sweetser, 22 I&N Dec. 709 (BIA 1999)

(1) Where the state statute under which an alien has been convicted is divisible, meaning it encompasses offenses that constitute crimes of violence as defined under 18 U.S.C. Â§ 16 (1994) and offenses that do not, it is necessary to look to the record of conviction, and to other documents admissible as evidence in proving a criminal conviction, to determine whether the specific offense of which the alien was convicted constitutes an aggravated felony as defined in section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(F) (Supp. II 1996).

(2) For purposes of determining whether an offense is a crime of violence as defined in 18 U.S.C. Â§ 16(b), it is necessary to examine the criminal conduct required for conviction, rather than the consequence of the crime, to find if the offense, by its nature, involves "a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

(3) To find that a criminal offense is a crime of violence under 18 U.S.C. Â§ 16(b), a causal link between the potential for harm and the "substantial risk" of "physical force" being used must be present.Matter of Magallanes, 22 I&N Dec. 1 (BIA 1998), clarified.

(4) An alien convicted of criminally negligent child abuse under sections 18-6-401(1) and (7) of the Colorado Revised Statutes, whose negligence in leaving his stepson alone in a bathtub resulted in the child's death, was not convicted of a crime of violence under 18 U.S.C. Â§ 16(b) because there was not "substantial risk that physical force" would be used in the commission of the crime.

***Matter of Chairez*, 26 I&N Dec. 349 (BIA 2014)**

(1) The categorical approach, which requires a focus on the minimum conduct that has a realistic probability of being prosecuted under the statute of conviction, is employed to determine whether the respondent's conviction for felony discharge of a firearm under section 76 10 508.1 of the Utah Code is for a crime of violence aggravated felony or a firearms offense under the Immigration and Nationality Act. Moncrieffe v. Holder, 133 S. Ct. 1678 (2013), followed.

(2) The Department of Homeland Security did not meet its burden of establishing the respondent's removability as an alien convicted of an aggravated felony where it did not show that section 76-10-508.1 of the Utah Code was divisible with respect to the mens rea necessary to constitute a crime of violence. Descamps v. United States, 133 S. Ct. 2276 (2013), followed. Matter of Lanferman, 25 I&N Dec. 721 (BIA 2012), withdrawn.

(3) Where the respondent did not demonstrate that he or anyone else was successfully prosecuted for discharging an "antique firearm" under section 76-10-508.1 of the Utah Code, which contains no exception for "antique firearms" as defined by 18 U.S.C. Â§ 921(a)(16) (2012), the statute was not shown to be categorically overbroad relative to section 237(a)(2)(C) of the Act, 8 U.S.C. Â§ 1227(a)(2)(C) (2012). Matter of Mendez Orellana, 25 I&N Dec. 254 (BIA 2010), clarified.

***Matter of Chairez and Sama*, 26 I&N Dec. 686 (A.G. 2015)**

The Attorney General referred the decisions of the Board of Immigration Appeals to herself for review of an issue relating to the application of *Descamps v. United States*, 133 S. Ct. 2276 (2013), ordering that those cases be stayed and not be regarded as precedential or binding as to the issue under review during the pendency of her review.

Firearms

***Matter of Vasquez-Muniz*, 22 I&N Dec. 1415 (BIA 2000) (overruled by *Matter of Vasquez-Muniz*, 23 I&N Dec. 207 (BIA 2002))**

Possession of a firearm by a felon in violation of section 12021(a)(1) of the California Penal Code is not an aggravated felony under section 101(a)(43)(E) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(E) (1994), because it is not an offense "described in" 18 U.S.C. Â§ 922(g)(1) (1994).

***Matter of Vasquez-Muniz*, 23 I&N Dec. 207 (BIA 2002)**

(1) An offense defined by state or foreign law may be classified as an aggravated felony as an offense "described in" a federal statute enumerated in section 101(a)(43) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43) (1994 & Supp. V 1999), even if it lacks the jurisdictional element of the federal statute.

(2) Possession of a firearm by a felon in violation of section 12021(a)(1) of the California Penal Code is an aggravated felony under section 101(a)(43)(E)(ii) of the Act because it is "described in" 18 U.S.C. Â§ 922(g)(1) (1994).Matter of Vasquez-Muniz, 22 I&N Dec. 1415 (BIA 2000), overruled.

***Matter of Oppedisano*, 26 I&N Dec. 202 (BIA 2013)**

The offense of unlawful possession of ammunition by a convicted felon in violation of 18 U.S.C. Â§ 922(g) (2006) is an aggravated felony under section 101(a)(43)(E)(ii) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(E)(ii) (2012).

***Matter of Chairez*, 26 I&N Dec. 349 (BIA 2014)**

(1) The categorical approach, which requires a focus on the minimum conduct that has a realistic probability of being prosecuted under the statute of conviction, is employed to determine whether the respondent's conviction for felony discharge of a firearm under section 76 10 508.1 of the Utah Code is for a crime of violence aggravated felony or a firearms offense under the Immigration and Nationality Act. Moncrieffe v. Holder, 133 S. Ct. 1678 (2013), followed.

(2) The Department of Homeland Security did not meet its burden of establishing the respondent's removability as an alien convicted of an aggravated felony where it did not show that section 76-10-508.1 of the Utah Code was divisible with respect to the mens rea necessary to constitute a crime of violence. Descamps v. United States, 133 S. Ct. 2276 (2013), followed. Matter of Lanferman, 25 I&N Dec. 721 (BIA 2012), withdrawn.

(3) Where the respondent did not demonstrate that he or anyone else was successfully prosecuted for discharging an "antique firearm" under section 76-10-508.1 of the Utah Code, which contains no exception for "antique firearms" as defined by 18 U.S.C. Â§ 921(a)(16) (2012), the statute was not shown to be categorically overbroad relative to section 237(a)(2)(C) of the Act, 8 U.S.C. Â§ 1227(a)(2)(C) (2012). Matter of Mendez Orellana, 25 I&N Dec. 254 (BIA 2010), clarified.

***Matter of Chairez*, 26 I&N Dec. 478 (BIA 2015)**

(1) With respect to aggravated felony convictions, Immigration Judges must follow the law of the circuit court of appeals in whose jurisdiction they sit in evaluating issues of divisibility, so the interpretation of *Descamps* reflected in *Matter of Chairez*, 26 I&N Dec. 349 (BIA 2014), applies only insofar as there is no controlling authority to the contrary in the relevant circuit.

(2) Because the United States Court of Appeals for the Tenth Circuit has taken an approach to divisibility different from that adopted in *Matter of Chairez*, the law of the Tenth Circuit must be followed in that circuit.

Fraud and Deceit

***Matter of Onyido*, 22 I&N Dec. 552 (BIA 1999)**

An alien who was convicted of submitting a false claim with intent to defraud arising from an unsuccessful scheme to obtain $15,000 from an insurance company was convicted of an "attempt" to commit a fraud in which the loss to the victim exceeded $10,000 within the meaning of section 101(a)(43)(U) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(U) (Supp. II 1996), and therefore is deportable under section 241(a)(2)(A)(iii) of the Act, 8U.S.C. Â§1251(a)(2)(A)(iii) (1994), as an alien convicted of an aggravated felony.

***Matter of Babaisakov*, 24 I&N Dec. 306 (BIA 2007)**

(1) A single ground for removal may require proof of a conviction tied to the statutory elements of a criminal offense, as well as proof of an additional fact or facts that are not tied to the statutory elements of any such offense.

(2) When a removal charge depends on proof of both the elements leading to a conviction and some nonelement facts, the nonelement facts may be determined by means of evidence beyond the limited "record of conviction" that may be considered by courts employing the "categorical approach," the "modified categorical approach," or a comparable "divisibility analysis," although the record of conviction may also be a suitable source of proof, depending on the circumstances.

(3) Section 101(a)(43)(M)(i) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(M)(i) (2000), which defines the term "aggravated felony" to mean "an offense that involves fraud or deceit in which the loss to the victim or victims exceeds $10,000," depends on proof of both a conviction having an element of fraud or deceit and the nonelement fact of a loss exceeding $10,000 that is tied to the conviction.

(4) Because the phrase "in which the loss to the victim or victims exceeds $10,000" is not tied to an element of the fraud or deceit offense, the loss determination is not subject to the limitations of the categorical approach, the modified categorical approach, or a divisibility analysis and may be proved by evidence outside the record of conviction, provided that the loss is still shown to relate to the conduct of which the person was convicted and, for removal purposes, is proven by clear and convincing evidence.

(5) The Immigration Judge erred in declining to consider a presentence investigation report as proof of victim loss because of his mistaken belief that he was restricted to consideration of the respondent's record of conviction.

***Matter of S-I-K-*, 24 I&N Dec. 324 (BIA 2007)**

An alien convicted of conspiracy is removable as an alien convicted of an aggravated felony within the meaning of sections 101(a)(43)(M)(i) and (U) of the Immigration and Nationality Act, 8 U.S.C. Â§Â§ 1101(a)(43)(M)(i) and (U) (2000), where the substantive crime that was the object of the conspiracy was an offense that involved "fraud or deceit" and where the potential loss to the victim or victims exceeded $10,000.

Jurisdictional Element

Matter of Vasquez-Muniz, 22 I&N Dec. 1415 (BIA 2000) (overruled by *Matter of Vasquez-Muniz*, 23 I&N Dec. 207 (BIA 2002))

Possession of a firearm by a felon in violation of section 12021(a)(1) of the California Penal Code is not an aggravated felony under section 101(a)(43)(E) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(E) (1994), because it is not an offense "described in" 18 U.S.C. Â§ 922(g)(1) (1994).

Matter of Vasquez-Muniz, 23 I&N Dec. 207 (BIA 2002)

(1) An offense defined by state or foreign law may be classified as an aggravated felony as an offense "described in" a federal statute enumerated in section 101(a)(43) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43) (1994 & Supp. V 1999), even if it lacks the jurisdictional element of the federal statute.

(2) Possession of a firearm by a felon in violation of section 12021(a)(1) of the California Penal Code is an aggravated felony under section 101(a)(43)(E)(ii) of the Act because it is "described in" 18 U.S.C. Â§ 922(g)(1) (1994).Matter of Vasquez-Muniz, 22 I&N Dec. 1415 (BIA 2000), overruled.

Matter of Bautista, 25 I&N Dec. 616 (BIA 2011)

Attempted arson in the third degree in violation of sections 110 and 150.10 of the New York Penal Law is an aggravated felony under section 101(a)(43)(E)(i) of the Immigration and Nationality Act, 8U.S.C. Â§ 1101(a)(43)(E)(i) (2006), even though the State crime lacks the jurisdictional element in the applicable Federal arson offense. Matter of Vasquez-Muniz, 23 I&N Dec. 207 (BIA 2002), followed.

Misprision of a Felony

Matter of Espinoza, 22 I&N Dec. 889 (BIA 1999)

A conviction for misprision of a felony under 18 U.S.C. Â§ 4 (1994) does not constitute a conviction for an aggravated felony under section 101(a)(43)(S) of the Immigration and Nationality Act, 8U.S.C. Â§ 1101(a)(43)(S) (Supp. II 1996), as an offense relating to obstruction of justice.Matter of Batista-Hernandez, 21 I&N Dec. 955 (BIA 1997), distinguished.

Murder

Matter of M-W-, 25 I&N Dec. 748 (BIA 2012)

Pursuant to the categorical approach, a conviction for the aggravated felony of murder, as defined in section 101(a)(43)(A) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(A) (2006), includes a conviction for murder in violation of a statute requiring a showing that the perpetrator acted with extreme recklessness or a malignant heart, notwithstanding that the requisite mental state may have resulted from voluntary intoxication and that no intent to kill was established.

Obstruction of Justice

Matter of Batista, 21 I&N Dec. 955 (BIA 1997)

(1) The offense of accessory after the fact to a drug-trafficking crime, pursuant to 18 U.S.C. Â§ 3 (Supp. V 1993), is not considered an inchoate crime and is not sufficiently related to a controlled substance violation to support a finding of deportability pursuant to section 241(a)(2)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1251(a)(2)(B)(i) (1994).

(2) The respondent's conviction pursuant to 18 U.S.C. Â§ 3 establishes his deportability as an alien convicted of an aggravated felony under section 241(a)(2)(A)(iii) of the Act,because the offense of accessory after the fact falls within the definition of an obstruction of justice crime under section 101(a)(43)(S) of the Act, 8 U.S.C.A. Â§1101(a)(43)(S) (West Supp. 1997), and because the respondent's sentence, regardless of any suspension of the imposition or execution of that sentence, "is at least one year."

Perjury

Matter of Martinez-Recinos, 23 I&N Dec. 175 (BIA 2001)

A conviction for perjury in violation of section 118(a) of the California Penal Code constitutes a conviction for an aggravated felony under section 101(a)(43)(S) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(S) (Supp. V 1999).

Prostitution for Commercial Advantage

Matter of Gertsenshteyn, 24 I&N Dec. 111 (BIA 2007)

(1) The categorical approach to determining whether a criminal offense satisfies a particular ground of removal does not apply to the inquiry whether a violation of 18 U.S.C. Â§ 2422(a) was committed for "commercial advantage" and thus qualifies as an aggravated felony under section 101(a)(43)(K)(ii) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(K)(ii) (2000), where "commercial advantage" is not an element of the offense and the evidence relating to that issue is not ordinarily likely to be found in the record of conviction.

(2) The respondent's offense was committed for "commercial advantage" where it was evident from the record of proceeding, including the respondent's testimony, that he knew that his employment activity was designed to create a profit for the prostitution business for which he worked.

Rape

***Matter of B*, -, 21 I&N Dec. 287 (BIA 1996)**

The respondent's conviction for second-degree rape under Article 27, section 463(a)(3) of the Annotated Code of Maryland, for which he was sentenced to 10 years' imprisonment, constitutes a "crime of violence" under 18 U.S.C. Â§ 16(b) (1994) and, hence, an "aggravated felony" under section 101(a)(43) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43) (1994).

Robbery

***Matter of Truong*, 22 I&N Dec. 1090 (BIA 1999)**

(1) An alien whose June 8, 1987, conviction for second degree robbery was not, at the time of his conviction, included in the aggravated felony definition was not deportable, even after that offense was included in the aggravated felony definition as a crime of violence under the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, due to its provisions regarding effective dates; however, the alien became deportable upon enactment of section 321(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 3009-628 (enacted Sept. 30, 1996) ("IIRIRA"), because that section established an aggravated felony definition that is to be applied without temporal limitations, regardless of the date of conviction.

(2) The term "actions taken" in section 321(c) of the IIRIRA, 110 Stat. at 3009-628, which limits the applicability of the aggravated felony definition of section 321(b), includes consideration of a case by the Board of Immigration Appeals; therefore that section's aggravated felony definition is applicable to cases decided by the Board on or after the IIRIRA's September 30, 1996, enactment date.

(3) The Attorney General's decision inMatter of Soriano, 21 I&N Dec. 516 (BIA 1996; A.G. 1997), remains binding on the Board, notwithstanding decisions in some courts of appeals that have rejected that decision.

Section 212(h) Waivers

***Matter of Pineda*,, 21 I&N Dec. 1017 (BIA 1997)**

(1) Section 348(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Division C of the Departments of Commerce, Justice, and State, and the Judiciary Appropriations Act for 1997, Pub. L. No. 104-208, 110 Stat. 3009, _____ ("IIRIRA"), enacted on September 30, 1996, amended section 212(h) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1182(h) (1994), to add restrictions precluding a grant of a waiver to any alien admitted as a lawful permanent resident who either has been convicted of an aggravated felony since the date of admission or did not have 7 years of continuous residence prior to the initiation of immigration proceedings.

(2) Section 348(b) of the IIRIRA provides that the restrictions in the amendments to section 212(h) of the Act apply to aliens in exclusion or deportation proceedings as of September 30, 1996, unless a final order of deportation has been entered as of such date.

(3) An aggravated felon who had a final administrative order of deportation as of September 30, 1996, would be subject to the restrictions on eligibility for a section 212(h) waiver if his proceedings were thereafter reopened; therefore, his motion to reopen deportation proceedings to apply for adjustment of status in conjunction with a section 212(h) waiver was properly denied.

***Matter of Michel*, 21 I&N Dec. 1101 (BIA 1998)**

(1) Pursuant to 62 Fed. Reg. 10,312, 10,369 (to be codified at 8 C.F.R. Â§ 240.10(a)(1) (interim, effective Apr. 1, 1997), an Immigration Judge must ascertain whether an alien desires representation in removal proceedings.

(2) An alien who has not previously been admitted to the United States as an alien lawfully admitted for permanent residence is statutorily eligible for a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (to be codified at 8 U.S.C. Â§ 1182(h)), despite his conviction for an aggravated felony.

Sentence Enhancement

***Matter of K-V-D-*, 22 I&N Dec. 1163 (BIA 1999)**

(1) Where a circuit court of appeals has interpreted the definition of an "aggravated felony" under section 101(a)(43) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43) (1994), only for purposes of criminal sentence enhancement, the Board of Immigration Appeals may interpret the phrase differently for purposes of implementing the immigration laws in cases arising within that circuit.

(2) An alien convicted in Texas of simple possession of a controlled substance, which would be a felony under Texas law but a misdemeanor under federal law, is not convicted of an aggravated felony within the meaning of section 101(a)(43)(B) of the Act.Matter of L-G-, 21 I&N Dec. 89 (BIA 1995), affirmed.

Sexual Abuse of a Minor

***Matter of Rodriguez-Rodriguez*, 22 I&N Dec. 991 (BIA 1999)**

The offense of indecency with a child by exposure pursuant to section 21.11(a)(2) of the Texas Penal Code Annotated constitutes sexual abuse of a minor and is therefore an aggravated felony within the meaning of section 101(a)(43)(A) of the Immigration and Nationality Act, 8 U.S.C. Â§1101(a)(43)(A) (Supp. II 1996).

***Matter of Crammond*, 23 I&N Dec. 38 (BIA 2001) (vacated by *Matter of Crammond*, 23 I&N Dec. 179 (BIA 2001))**

(1) A conviction for "murder, rape, or sexual abuse of a minor" must be for a felony offense in order for the crime to be considered an aggravated felony under section 101(a)(43)(A) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(A) (Supp. V 1999).

(2) In determining whether a state conviction is for a felony offense for immigration purposes, the Board of Immigration Appeals applies the federal definition of a felony set forth at 18 U.S.C. Â§ 3559(a)(5) (1994).

***Matter of Small*, 23 I&N Dec. 448 (BIA 2002)**

A misdemeanor offense of sexual abuse of a minor constitutes an aggravated felony under section 101(a)(43)(A) of the Immigration and Nationality Act, 8 U.S.C. Â§1101(a)(43)(A) (2000).

***Matter of V-F-D-*, 23 I&N Dec. 859 (BIA 2006)**

A victim of sexual abuse who is under the age of 18 is a "minor" for purposes of determining whether an alien has been convicted of sexual abuse of a minor within the meaning of section 101(a)(43)(A) of the Immigration and Nationality Act, 8 U.S.C. Â§Â§ 1101(a)(43)(A) (2000).

***Matter of Esquivel-Quintana*, 26 I&N Dec. 469 (BIA 2015)**

(1) For a statutory rape offense that may include a 16- or 17-year-old victim to be categorically "sexual abuse of a minor" under section 101(a)(43)(A) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(A) (2012), the statute must require a meaningful age differential between the victim and the perpetrator. Matter of Rodriguez Rodriguez, 22 I&N Dec. 991 (BIA 1999), and Matter of V F-D-, 23 I&N Dec. 859 (BIA 2006), clarified.

(2) The offense of unlawful intercourse with a minor in violation of section 261.5(c) of the California Penal Code, which requires that the minor victim be "more than three years younger" than the perpetrator, categorically constitutes "sexual abuse of a minor" and is therefore an aggravated felony under section 101(a)(43)(A) of the Act.

Sodomy by Force

***Matter of Chavez-Alvarez*, 26 I&N Dec. 274 (BIA 2014)**

(1) Adjustment of status constitutes an "admission" for purposes of determining an alien's removability under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1227(a)(2)(A)(iii) (2012), as an alien convicted of an aggravated felony "at any time after admission." Matter of Rosas, 22 I&N Dec. 616 (BIA 1999), reaffirmed.

(2) An element listed in a specification in the Manual for Courts-Martial ("MCM"), which must be pled and proved beyond a reasonable doubt, is the functional equivalent of an "element" of a criminal offense for immigration purposes.

(3) The crime of sodomy by force in violation of article 125 of the Uniform Code of Military Justice, 10 U.S.C. Â§ 925 (2000), and the Punitive Articles of the MCM relating to sodomy, is a crime of violence under 18 U.S.C. Â§ 16 (2012) within the definition of an aggravated felony under section 101(a)(43)(F) of the Act, 8 U.S.C. Â§ 1101(a)(43)(F)(2012).

Theft Offenses

***Matter of V-Z-S-*, 22 I&N Dec. 1338 (BIA 2000)**

(1) A taking of property constitutes a "theft offense" within the definition of an aggravated felony in section 101(a)(43)(G) of the Immigration and Nationality Act ("Act"), 8U.S.C. Â§1101(a)(43)(G) (Supp. IV 1998), whenever there is criminal intent to deprive the owner of the rights and benefits of ownership, even if such deprivation is less than total or permanent.

(2) The respondent's conviction for unlawful driving and taking of a vehicle in violation of section 10851 of the California Vehicle Code is a "theft offense" under section 101(a)(43)(G) of the Act.

***Matter of Bahta*, 22 I&N Dec. 1381 (BIA 2000) (Possession of Stolen Property)**

(1) The respondent's conviction for attempted possession of stolen property, in violation of sections 193.330 and 205.275 of the Nevada Revised Statutes, is a conviction for an attempted "theft offense (including receipt of stolen property)," and therefore an aggravated felony, within the meaning of sections 101(a)(43)(G) and (U) of the Immigration and Nationality Act, 8 U.S.C. Â§Â§1101(a)(43)(G) and (U) (Supp. IV 1998).

(2) The Immigration and Naturalization Service retains prosecutorial discretion to decide whether or not to commence removal proceedings against a respondent subsequent to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546.

***Matter of Garcia-Madruga*, 24 I&N Dec. 436 (BIA 2008)**

(1) A "theft offense" within the definition of an aggravated felony in section 101(a)(43)(G) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(G) (2000), ordinarily requires the taking of, or exercise of control over, property without consent and with the criminal intent to deprive the owner of the rights and benefits of ownership, even if such deprivation is less than total or permanent. *Matter of V-Z-S-*, 22 I&N Dec. 1338 (BIA 2000), clarified.

(2) The respondent's welfare fraud offense in violation of section 40-6-15 of the General Laws of Rhode Island is not a "theft offense" under section 101(a)(43)(G) of the Act.

***Matter of CARDIEL*, 25 I&N Dec. 12 (BIA 2009)**

A conviction for receipt of stolen property under section 496(a) of the California Penal Code, with a sentence of imprisonment of at least 1 year, categorically qualifies as a receipt of stolen property aggravated felony conviction under section 101(a)(43)(G) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1101(a)(43)(G) (2006).

***Matter of Sierra*, 26 I&N Dec. 288 (BIA 2014)**

Under the law of the United States Court of Appeals for the Ninth Circuit, the offense of attempted possession of a stolen vehicle in violation of sections 193.330 and 205.273 of the Nevada Revised Statutes, which requires only a mental state of "reason to believe," is not categorically an aggravated felony "theft offense (including receipt of stolen property)" under sections 101(a)(43)(G) and (U) of the Immigration and Nationality Act, 8 U.S.C. Â§Â§ 1101(a)(43)(G) and (U) (2012).

Transportation of Undocumented Aliens

***Matter of Ruiz*, 22 I&N Dec. 486 (BIA 1999)**

An alien who is convicted of transporting an illegal alien within the United States in violation of section 274(a)(1)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. Â§ 1324(a)(1)(A)(ii) (1994), was convicted of an aggravated felony as defined in section 101(a)(43)(N) of the Act, 8 U.S.C. Â§ 1101(a)(43)(N) (Supp. II 1996), and is therefore deportable under section 241(a)(2)(A)(iii) of the Act, 8 U.S.C. Â§ 1251(a)(2)(A)(iii) (1994), as an alien convicted of an aggravated felony.Matter of I-M-, 7 I&N Dec. 389 (BIA 1957), distinguished.

CANCELLATION OF REMOVAL (SPECIAL RULE)

Availability of Waiver

***Matter of Y-N-P-*, 26 I&N Dec. 10 (BIA 2012)**

An applicant for special rule cancellation of removal under section 240A(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(2) (2006), cannot utilize a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h) (2006), to overcome the section 240A(b)(2)(A)(iv) bar resulting from inadmissibility under section 212(a)(2).

Continuous Physical Presence

***Matter of Garcia*, 24 I&N Dec. 179 (BIA 2007)**

An application for special rule cancellation of removal is a continuing one, so an applicant can continue to accrue physical presence until the issuance of a final administrative decision. *Matter of Ortega-Cabrera*, 23 I&N Dec. 793 (BIA 2005), reaffirmed; Cuadra v. Gonzales, 417 F.3d 947 (8th Cir. 2005), followed in jurisdiction only.

***Matter of Castro-Lopez*, 26 I&N Dec. 693 (BIA 2015)**

The 10 years of continuous physical presence required by 8 C.F.R. § 1240.66(c)(2) (2015) for aliens seeking special rule cancellation of removal under section 203 of the Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, tit. II, 111 Stat. 2160, 2193, 2196 (1997), amended by Pub. L. No. 105-139, 111 Stat. 2644 (1997), should be measured from the alien's most recently incurred ground of removal, at least where that ground is among those listed in 8 C.F.R. § 1240.66(c)(1).

Battered Spouse

Matter of A-M-, 25 I&N Dec. 66 (BIA 2009)

(1) Notwithstanding the heading of section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b) (2006), which only refers to nonpermanent residents, a lawful permanent resident who qualifies as a battered spouse may be eligible to apply for cancellation of removal under section 240A(b)(2) of the Act.

(2) Given the nature and purpose of the relief of cancellation of removal for battered spouses under section 240A(b) (2) of the Act, such factors as an alien's divorce from an abusive spouse, remarriage, and previous self-petition for relief based on the abusive marriage are relevant in determining whether an application for that relief should be granted in the exercise of discretion.

Matter of M-L-M-A-, 26 I&N Dec. 360 (BIA 2014)

(1) Because an application for special rule cancellation of removal under section 240A(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(2) (2006), is a continuing one, false testimony given by the respondent more than 3 years prior to the entry of a final administrative order should not be considered in determining whether she is barred from establishing good moral character under section 101(f)(6) of the Act, 8 U.S.C. § 1101(f)(6) (2006). Matter of Garcia, 24 I&N Dec. 179 (BIA 2007), and Matter of Ortega-Cabrera, 23 I&N Dec. 793 (BIA 2005), followed.

(2) Although the respondent was divorced from her abusive husband and subsequently had a long-term relationship with another man, she had not previously been granted special rule cancellation of removal based on her abusive marriage and had significant equities that merited a favorable exercise of discretion. Matter of A-M-, 25 I&N Dec. 66 (BIA 2009), distinguished.

Good Moral Character

Matter of M-L-M-A-, 26 I&N Dec. 360 (BIA 2014)

(1) Because an application for special rule cancellation of removal under section 240A(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(2) (2006), is a continuing one, false testimony given by the respondent more than 3 years prior to the entry of a final administrative order should not be considered in determining whether she is barred from establishing good moral character under section 101(f)(6) of the Act, 8 U.S.C. § 1101(f)(6) (2006). Matter of Garcia, 24 I&N Dec. 179 (BIA 2007), and Matter of Ortega-Cabrera, 23 I&N Dec. 793 (BIA 2005), followed.

(2) Although the respondent was divorced from her abusive husband and subsequently had a long-term relationship with another man, she had not previously been granted special rule cancellation of removal based on her abusive marriage and had significant equities that merited a favorable exercise of discretion. Matter of A-M-, 25 I&N Dec. 66 (BIA 2009), distinguished.

CHILD STATUS PROTECTION ACT

Matter of Avila-Perez, 24 I&N Dec. 78 (BIA 2007)

(1) Section 201(f)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1151(f)(1) (Supp. II 2002), which allows the beneficiary of an immediate relative visa petition to retain his status as a "child" after he turns 21, applies to an individual whose visa petition was approved before the August 6, 2002, effective date of the Child Status Protection Act, Pub. L. No. 107-208, 116 Stat. 927 (2002), but who filed an application for adjustment of status after that date.

(2) The respondent, whose visa petition was approved before August 6, 2002, and who filed his adjustment of status application after that date, retained his status as a child, and therefore an immediate relative, because he was under the age of 21 when the visa petition was filed on his behalf.

Matter of Zamora-Molina, 25 I&N Dec. 606 (BIA 2011)

(1) Section 201(f)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1151(f)(2) (2006), governs whether an alien who is the beneficiary of a visa petition according him or her second-preference status as the child of a lawful permanent resident under section 203(a)(2)(A) of the Act, 8 U.S.C. § 1153(a)(2)(A) (2006), is an immediate relative upon the naturalization of the petitioning parent.

(2) Pursuant to section 201(f)(2) of the Act, an alien's actual, not adjusted, age on the date of his or her parent's naturalization determines whether he or she is an immediate relative.

(3) Section 204(k)(2) of the Act, 8 U.S.C. § 1154(k)(2) (2006), does not allow an alien to retain his or her 2A-preference status by opting out of automatic conversion to the first-preference category as a son or daughter of a United States citizen upon his or her parent's naturalization.

CITIZENSHIP

Acquisition of Citizenship by a Child

Matter of Fuentes-Martinez, 21 I&N Dec. 893 (BIA 1997)

(1) A child who has satisfied the statutory conditions of section 321(a) of the Immigration and Nationality Act, 8 U.S.C. §1432(a) (1994), before the age of 18 years has acquired derivative United States citizenship regardless of the child's age at the time the amendments to that section by the Act of October 5, 1978, Pub. L. No. 95-417, 92 Stat. 917 ("1978 Amendments"), took effect.

(2) The respondent, who was 16 years and 4 months of age when his mother was naturalized, and who resided in the United States at that time as a lawful permanent resident while under the age of 18 years, became a derivative United States citizen, even though he was already 18 years old when the 1978 Amendments took effect.

Matter of Rodriguez-Tejedor, 23 I&N Dec. 153 (BIA 2001)

(1) The automatic citizenship provisions of section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431 (1994), as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 ("CCA"), are not retroactive and, consequently, do not apply to an individual who resided in the United States with his United States citizen parents as a lawful permanent resident while under the age of 18 years, but who was over the age of 18 years on the CCA effective date.

(2) The respondent, who resided in the United States with his United States citizen adoptive parents as a lawful permanent resident while under the age of 18 years, but who was over the age of 18 years on the CCA effective date, is ineligible for automatic citizenship under section 320 of the Act.

Matter of Navas-Acosta, 23 I&N Dec. 586 (BIA 2003)

(1) United States nationality cannot be acquired by taking an oath of allegiance pursuant to an application for naturalization, because birth and naturalization are the only means of acquiring United States nationality under the Immigration and Nationality Act.

(2) The respondent, who was born abroad and did not acquire United States nationality at birth, by naturalization, or by congressional action, failed to establish such nationality by declaring his allegiance to the United States in connection with an application for naturalization.

Matter of Rowe, 23 I&N Dec. 962 (BIA 2006)

(1) Under the laws of Guyana, the sole means of legitimation of a child born out of wedlock is the marriage of the child's natural parents. Matter of Goorahoo, 20 I&N Dec. 782 (BIA 1994), overruled.

(2) Where the respondent was born out of wedlock in Guyana and his natural parents were never married, his paternity has not been established by legitimation, so he is not ineligible to obtain derivative citizenship under former section 321(a)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1432(a)(3) (1994).

Matter of Hines, 24 I&N Dec. 544 (BIA 2008)

(1) Under Jamaican law, the sole means of "legitimation" of a child born out of wedlock is the marriage of the child's natural parents. *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981), overruled.

(2) The respondent was born in Jamaica of natural parents who never married, and therefore his paternity was not established "by legitimation" so as to disqualify him from deriving United States citizenship pursuant to former section 321(a)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1432(a)(3) (1988), through his mother's

naturalization in 1991.

Matter of Nwozuzu, 24 I&N Dec. 609 (BIA 2008)

To obtain derivative citizenship under former section 321(a) of the Immigration and Nationality Act, 8 U.S.C. § 1432(a) (1994), an alien must acquire the status of an alien lawfully admitted for permanent residence while he or she is under the age of 18 years.

Matter of Guzman-Gomez, 24 I&N Dec. 824 (BIA 2009)

(1)The terms child and parent defined at section 101(c) of the Immigration and Nationality Act, 8 U.S.C. § 1101(c) (2006), do not encompass stepchildren and stepparents.

(2) A person born outside the United States cannot derive United States citizenship under section 320(a) of the Act, 8 U.S.C. § 1431(a) (2006), by virtue of his or her relationship to a nonadoptive stepparent.

Matter of Douglas, 26 I&N Dec. 197 (BIA 2013)

A child who has satisfied the statutory conditions of former section 321(a) of the Immigration and Nationality Act, 8 U.S.C. § 432(a) (2000), before the age of 18 years has acquired United States citizenship, regardless of whether the naturalized parent acquired legal custody of the child before or after the naturalization. Matter of Baires, 24 I&N Dec. 467 (BIA 2008), followed. Jordon v. Attorney General of U.S., 424 F.3d 320 (3d Cir. 2005), not followed.

Matter of Cross, 26 I&N Dec. 478 (BIA 2015)

A person born out of wedlock may qualify as a legitimated "child" of his or her biological parents under section 101(c)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1101(c)(1) (2012), for purposes of citizenship if he or she was born in a country or State that has eliminated all legal distinctions between children based on the marital status of their parents or had a residence or domicile in such a country or State (including a State within the United States), if otherwise eligible. *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008), and *Matter of Rowe*, 23 I&N Dec. 962 (BIA 2006), overruled in part. *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981), and *Matter of Goorahoo*, 20 I&N Dec. 782 (BIA 1994), reaffirmed.

Ineligible to Citizenship

Matter of Kanga, 22 I&N Dec. 1206 (BIA 2000)

(1) The phrase "ineligible to citizenship" in section 212(a)(8)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(8)(A) (Supp. II 1996), refers only to those aliens who are barred from naturalization by virtue of their evasion of military service.

(2) An alien convicted of an aggravated felony is not thereby rendered inadmissible under section 212(a)(8)(A) of the Act as an alien who is permanently "ineligible to citizenship."

CONTINUANCES

Matter of Hashmi, 24 I&N Dec. 785 (BIA 2009)

(1) An alien's unopposed motion to continue ongoing removal proceedings to await the adjudication of a pending family-based visa petition should generally be granted if approval of the visa petition would render him prima facie eligible for adjustment of status. *Matter of Garcia*, 16 I&N Dec. 653 (BIA 1978), followed.

(2)In determining whether good cause exists to continue such proceedings, a variety of factors may be considered, including, but not limited to: (1) the Department of Homeland Security's response to the motion to continue; (2) whether the underlying visa petition is prima facie approvable; (3) the respondent's statutory eligibility for adjustment of status; (4) whether the respondent's application for adjustment merits a favorable exercise of discretion; and (5) the reason for the continuance and any other relevant procedural factors.

Matter of Rajah, 25 I&N Dec. 127 (BIA 2009)

(1) In determining whether good cause exists to continue removal proceedings to await the adjudication of a pending employment-based visa petition or labor certification, an Immigration Judge should determine the alien's place in the adjustment of status process and consider the applicable factors identified in Matter of Hashmi, 24 I&N Dec. 785 (BIA 2009), and any other relevant considerations.

(2) An alien's unopposed motion to continue ongoing removal proceedings to await the adjudication of a pending employment-based visa petition should generally be granted if approval of the visa petition would render him prima facie eligible for adjustment of status.

(3) The pendency of a labor certification is generally not sufficient to warrant a grant of a continuance.

Matter of C-B-, 25 I&N Dec. 888 (BIA 2012)

(1) In order to meaningfully effectuate the statutory and regulatory privilege of legal representation where it has not been expressly waived by a respondent, an Immigration Judge must grant a reasonable and realistic period of time to provide a fair opportunity for the respondent to seek, speak with, and retain counsel.

(2) If a respondent expresses a fear of persecution or harm in a country to which he or she might be removed, the regulations require the Immigration Judge to advise the respondent of the right to apply for asylum or withholding of removal (including protection under the Convention Against Torture) and make the appropriate application forms available.

(3) If a respondent indicates that he or she will not waive appeal and is therefore ineligible or a grant of voluntary departure prior to the completion of removal proceedings under section 240B(a)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(a)(1) (2006), the Immigration Judge should consider the respondent's eligibility for voluntary departure at the

Matter of Montiel, 26 I&N Dec. 555 (BIA 2015)

Removal proceedings may be delayed, where warranted, pending the adjudication of a direct appeal of a criminal conviction. *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), followed.

CONTROLLED SUBSTANCE DEPORTABILITY

Matter of Moncada, 24 I&N Dec. 62 (BIA 2007)

The exception to deportability under section 237(a)(2)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(B)(i) (2000), for an alien convicted of possessing 30 grams or less of marijuana for his own use does not apply to an alien convicted under a statute that has an element requiring that possession of the marijuana be in a prison or other correctional setting.

Matter of Martinez-Zapata, 24 I&N Dec. 424 (BIA 2007)

(1) Any fact (including a fact contained in a sentence enhancement) that serves to increase the maximum penalty for a crime and that is required to be found by a jury beyond a reasonable doubt, if not admitted by the defendant, is to be treated as an element of the underlying offense, so that a conviction involving the application of such an enhancement is a conviction for the enhanced offense. Matter of Rodriguez-Cortes, 20 I&N Dec. 587 (BIA 1992), superseded.

(2)The exception under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) (2000), for an alien convicted of a single offense of simple possession of 30 grams or less of marijuana does not apply to an alien whose conviction was enhanced by virtue of his possession of marijuana in a "drug-free zone," where the enhancement factor increased the maximum penalty for the underlying offense and had to be proved beyond a reasonable doubt to a jury under the law of the convicting jurisdiction. Matter of Moncada, 24 I&N Dec. 62 (BIA 2007), clarified.

Matter of Sanchez-Cornejo, 25 I&N Dec. 273 (BIA 2010)

The offense of delivery of a simulated controlled substance in violation of Texas law is not an aggravated felony, as defined by section 101(a)(43)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(B) (2006), but it is a violation of a law relating to a controlled substance under former section 241(a)(2)(B)(i) of the Act, 8 U.S.C. § 1251(a)(2)(B)(i) (1994).

Matter of Casillas, 25 I&N Dec. 317 (BIA 2010)

An alien is removable under section 237(a)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(A) (2006), as one who was inadmissible at the time of entry or adjustment of status pursuant to section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C) (2006), where an appropriate immigration official knows or has reason to believe

that the alien is a trafficker in controlled substances at the time of admission to the United States. Matter of Rocha, 20 I&N Dec. 944 (BIA 1995), modified.

Matter of Cuellar-Gomez, 25 I&N Dec. 850 (BIA 2012)

(1) A formal judgment of guilt of an alien entered by a municipal court is a "conviction" under section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A) (2006), if the proceedings in which the judgment was entered were genuine criminal proceedings. *Matter of Rivera-Valencia*, 24 I&N Dec. 484 (BIA 2008), and *Matter of Eslamizar*, 23 I&N Dec. 684 (BIA 2004), followed.

(2) A Wichita, Kansas, municipal ordinance which recapitulates a Kansas statute prohibiting marijuana possession is a "law or regulation of a State . . . relating to a controlled substance" under section 237(a)(2)(B)(i) of the Act, 8 U.S.C. § 1227(a)(2)(B)(i) (2006).

(3) Possession of marijuana after a prior municipal ordinance conviction for marijuana possession in violation of former sections 65-4162(a) and (b) of the Kansas Statutes Annotated is an aggravated felony under section 101(a)(43)(B) of the Act by virtue of its correspondence to the Federal felony of "recidivist possession," 21 U.S.C. § 844 (2006), provided the prior conviction was final when the second offense was committed. Lopez v. Gonzales, 549 U.S. 47 (2006), followed; Carachuri-Rosendo v. Holder, 130 S. Ct. 2577 (2010), and Matter of Carachuri-Rosendo, 24 I&N Dec. 382 (BIA 2007), distinguished.

Matter of Davey, 26 I&N Dec. 37 (BIA 2012)

(1) For purposes of section 237(a)(2)(B)(i) of the Immigration and Nationality Act, 8U.S.C. § 1227(a)(2)(B)(i) (2006), the phrase "a single offense involving possession for one's own use of thirty grams or less of marijuana" calls for a circumstance-specific inquiry into the character of the alien's unlawful conduct on a single occasion, not a categorical inquiry into the elements of a single statutory crime.

(2) An alien convicted of more than one statutory crime may be covered by the exception to deportability for an alien convicted of "a single offense involving possession for one's own use of thirty grams or less ofmarijuana" if all the alien's crimeswere closely related to or connected with a single incident in which the alien possessed 30 grams or less of marijuana for his or her own use, provided that none of those crimeswas inherently more serious than simple possession.

Matter of Dominguez-Rodriguez, 26 I&N Dec. 408 (BIA 2014)

For purposes of section 237(a)(2)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(B)(i) (2012), the phrase "a single offense involving possession for one's own use of thirty grams or less of marijuana" calls for a circumstance-specific inquiry into the character of the alien's unlawful conduct on a single occasion, not a categorical inquiry into the elements of a single statutory crime. Moncrieffe v. Holder, 133 S. Ct. 1678 (2013), distinguished. Matter of Davey, 26 I&N Dec. 37 (BIA 2012), reaffirmed.

CONVENTION AGAINST TORTURE

Acquiesence of Public Official

Matter of S-V-, 22 I&N Dec. 1306 (BIA 2000)

An applicant for protection under Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must establish that the torture feared would be inflicted by or with the acquiescence of a public official or other person acting in an official capacity; therefore, protection does not extend to persons who fear entities that a government is unable to control.

Matter of Y-L-, A-G- and R-S-R-, 23 I&N Dec. 270 (A.G. 2002)

(1) Aggravated felonies involving unlawful trafficking in controlled substances presumptively constitute "particularly serious crimes" within the meaning of section 241(b)(3)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3)(B) (2000), and only under the most extenuating circumstances that are both extraordinary and compelling would departure from this interpretation be warranted or permissible. Matter of S-S-, 22 I&N Dec. 458 (BIA 1999), overruled.

(2) The respondents are not eligible for deferral of removal under Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment where each failed to establish that the torture feared would be inflicted by or with the acquiescence of a public official or other person acting in an official capacity. Matter of S-V-, 22 I&N Dec. 1306 (BIA 2000), followed.

Burden of Proof

Matter of M-B-A-, 23 I&N Dec. 474 (BIA 2002)

A Nigerian convicted of a drug offense in the United States failed to establish eligibility for deferral of removal under Article 3 of the Convention Against Torture because the evidence she presented regarding the enforcement of Decree No. 33 of the Nigerian National Drug Law Enforcement Agency against individuals similarly situated to her was insufficient to demonstrate that it is more likely than not that she will be tortured by a public official, or at the instigation or with the consent or acquiescence of such an official, if she is deported to Nigeria.

Matter of J-F-F-, 23 I&N Dec. 912 (A.G. 2006)

An alien's eligibility for deferral of removal under the Convention Against Torture cannot be established by stringing together a series of suppositions to show that it is more likely than not that torture will result where the evidence does not establish that each step in the hypothetical chain of events is more likely than not to happen.

Definition of Torture

Matter of J-E-, 23 I&N Dec. 291 (BIA 2002)

(1) An alien seeking protection under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must establish that it is more likely than not that he will be tortured in the country of removal.

(2) Torture within the meaning of the Convention Against Torture and 8 C.F.R. § 208.18(a) (2001) is an extreme form of cruel and inhuman treatment and does not extend to lesser forms of cruel, inhuman, or degrading treatment or punishment.

(3) For an act to constitute "torture" it must satisfy each of the following five elements in the definition of torture set forth at 8 C.F.R. § 208.18(a): (1) the act must cause severe physical or mental pain or suffering; (2) the act must be intentionally inflicted; (3) the act must be inflicted for a proscribed purpose; (4) the act must be inflicted by or at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim; and (5) the act cannot arise from lawful sanctions.

(4) According to 8 C.F.R. § 208.16(c)(3) (2001), in adjudicating a claim for protection under Article 3 of the Convention Against Torture, all evidence relevant to the possibilityof future torture must be considered, including, but not limited to: (1) evidence of past torture inflicted upon the applicant; (2) evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured; (3) evidence of gross, flagrant, or mass violations of human rights within the country of removal, where applicable; and (4) other relevant information regarding conditions in the country of removal.

(5) The indefinite detention of criminal deportees by Haitian authorities does not constitute torture within the meaning of 8 C.F.R. § 208.18(a) where there is no evidence that the authorities intentionally and deliberately detain deportees in order to inflict torture.

(6) Substandard prison conditions in Haiti do not constitute torture within the meaning of 8 C.F.R. § 208.18(a) where there is no evidence that the authorities intentionally create and maintain such conditions in order to inflict torture.

(7) Evidence of the occurrence in Haitian prisons of isolated instances of mistreatment that may rise to the level of torture as defined in the Convention Against Torture is insufficient to establish that it is more likely than not that the respondent will be tortured if returned to Haiti.

Matter of G-A-, 23 I&N Dec. 366 (BIA 2002)

An Iranian Christian of Armenian descent demonstrated eligibility for deferral of removal under Article 3 of the Convention Against Torture and 8C.F.R. §208.17(a) (2001) by establishing that it is more likely than not that he will be tortured if deported to Iran based on a combination of factors, including his religion, his ethnicity, the duration of his residence in the United States, and his drug-related convictions in this country.

Jurisdiction

***Matter of H-M-V-*, 22 I&N Dec. 256 (BIA 1998)**

The Board of Immigration Appeals lacks jurisdiction to adjudicate a claim for relief from deportation pursuant to Article 3 of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, as there has been no specific legislation to implement the provisions of Article 3, no regulations have been promulgated with respect to Article 3, and the United States Senate has declared that Article 3 is a non-self-executing treaty provision.

***Matter of V-K-*, 24 I&N Dec. 500 (BIA 2008)**

The Board of Immigration Appeals reviews de novo an Immigration Judge's prediction or finding regarding the likelihood that an alien will be tortured, because it relates to whether the ultimate statutory requirement for establishing eligibility for relief from removal has been met and is therefore a mixed question of law and fact, or a question of judgment.

Termination of Deferral of Removal

***Matter of C-C-I-*, 26 I&N Dec. 375 (BIA 2014)**

(1) Reopening of removal proceedings for a de novo hearing to consider termination of an alien's deferral of removal pursuant to 8 C.F.R. § 1208.17(d)(1) (2014), is warranted where the Government presents evidence that was not considered at the previous hearing if it is relevant to the possibility that the alien will be tortured in the country to which removal has been deferred.

(2) The doctrine of collateral estoppel does not prevent an Immigration Judge from reevaluating an alien's credibility in light of additional evidence presented at a hearing under 8 C.F.R. § 1208.17(d)(3).

CRIMES INVOLVING MORAL TURPITUDE

Accessory after the Fact

***Matter of Rivens*, 25 I&N Dec. 623 (BIA 2011)**

(1) In order to establish that a returning lawful permanent resident alien is to be treated as an applicant for admission to the United States, the Department of Homeland Security has the burden of proving by clear and convincing evidence that one of the six exceptions to the general rule for lawful permanent residents set forth at section 101(a)(13)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(13)(C) (2006), applies.

(2) The offense of accessory after the fact is a crime involving moral turpitude, but only if the underlying offense is such a crime.

Animal Cruelty

***Matter of Ortega-Lopez*, 26 I&N Dec. 99 (BIA 2013)**

The offense of sponsoring or exhibiting an animal in an animal fighting venture in violation of 7 U.S.C. § 2156(a)(1) (2006) is categorically a crime involving moral turpitude.

Assault

***Matter of Fualaau*, 21 I&N Dec. 475 (BIA 1996)**

(1) Assault in the third degree under section 707-712 of the Hawaii Revised Statute is not a crime involving moral turpitude within the meaning of section 241(a)(2)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 241(a)(2)(A)(ii) (1994), where the offense is similar to a simple assault.

(2) Where reckless conduct is an element of the statute, a crime of assault can be, but is not per se, a crime involving moral turpitude.

***Matter of Sejas*, 24 I&N Dec. 236 (BIA 2007)**

The offense of assault and battery against a family or household member in violation of section 18.2-57.2 of the Virginia Code is not categorically a crime involving moral turpitude.

***Matter of Solon*, 24 I&N Dec. 239 (BIA 2007)**

The offense of assault in the third degree in violation of section 120.00(1) of the New York Penal Law, which requires both specific intent and physical injury, is a crime involving moral turpitude.

Attempt Offenses

***Matter of Vo*, 25 I&N Dec. 426 (BIA 2011)**

Where the substantive offense underlying an alien's conviction for an attempt offense is a crime involving moral turpitude, the alien is considered to have been convicted of a crime involving moral turpitude for purposes of section 237(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A) (2006), even though that section makes no reference to attempt offenses.

Burglary

***Matter of Louissaint*, 24 I&N Dec. 754 (BIA 2009)**

(1) The categorical approach for determining if a particular crime involves moral turpitude set forth in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), requires the traditional categorical analysis, which was used by the United States Supreme Court in *Gonzales v. Duenas-Alvarez*, 549 U.S. 183 (2007), and includes an inquiry into whether there is a "realistic probability" that the statute under which the alien was convicted would be applied to reach conduct that does not involve moral turpitude.

(2) A conviction for burglary of an occupied dwelling in violation of section 810.02(3)(a) of the Florida Statutes is categorically a conviction for a crime involving moral turpitude. *Matter of M-*, 2 I&N Dec. 721 (BIA; A.G. 1946), distinguished.

Cancellation of Removal Eligibility

Matter of Garcia-Hernandez, 23 I&N Dec. 590 (BIA 2002)

(1) An alien who has been convicted of a crime involving moral turpitude that falls within the "petty offense" exception in section 212(a)(2)(A)(ii)(II) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II) (1994), is not ineligible for cancellation of removal under section 240A(b)(1)(C) of the Act, 8 U.S.C. § 1229b(b)(1)(C) (Supp. IV 1998), because he "has not been convicted of an offense under section 212(a)(2)" of the Act.

(2) An alien who has committed a crime involving moral turpitude that falls within the "petty offense" exception is not ineligible for cancellation of removal under section 240A(b)(1)(B) of the Act, because commission of a petty offense does not bar the offender from establishing good moral character under section 101(f)(3) of the Act, 8 U.S.C.§ 1101(f)(3) (Supp. IV 1998).

(3) An alien who has committed more than one petty offense is not ineligible for the "petty offense" exception if "only one crime" is a crime involving moral turpitude.

(4) The respondent, who was convicted of a crime involving moral turpitude that qualifies as a petty offense, was not rendered ineligible for cancellation of removal under section 240A(b)(1) of Act by either his conviction or his commission of another offense that is not a crime involving moral turpitude.

Matter of Deanda-Romo, 23 I&N Dec. 597 (BIA 2003)

The respondent, who was convicted of two misdemeanor crimes involving moral turpitude, is not precluded by the provisions of section 240A(d)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(d)(1)(B) (2000), from establishing the requisite 7 years of continuous residence for cancellation of removal under section 240A(a)(2), because his first crime, which qualifies as a petty offense, did not render him inadmissible, and he had accrued the requisite 7 years of continuous residence before the second offense was committed.

Matter of Robles, 24 I&N Dec. 22 (BIA 2006)

(1) When the Attorney General overrules or reverses only one holding in a precedent decision of the Board of Immigration Appeals and expressly declines to consider any alternative holding in the case, the remaining holdings retain their precedential value.

(2) Misprision of a felony in violation of 18 U.S.C. § 4 (2000) is a crime involving moral turpitude. Matter of Sloan, 12 I&N Dec. 840 (A.G. 1968; BIA 1966), overruled in part.

(3) Under the "stop-time" rule in section 240A(d)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(d)(1)(B) (2000), an offense is deemed to end an alien's continuous residence as of the date of its commission, even if the offense was committed prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546. Matter of Perez, 22 I&N Dec. 689 (BIA 1999), reaffirmed.

Matter of Cortez, 25 I&N Dec. 301 (BIA 2010)

(1) An alien who has been convicted of a crime involving moral turpitude for which a sentence of a year or longer may be imposed has been convicted of an offense "described under" section 237(a)(2) of the Act, 8 U.S.C. § 1227(a)(2) (2006), and is therefore ineligible for cancellation of removal under section 240A(b)(1)(C) of the Act, 8 U.S.C. § 1229b(b)(1)(C) (2006), regardless of the alien's eligibility for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II) (2006). Matter of Almanza, 24 I&N Dec. 771 (BIA 2009), clarified. Matter of Gonzalez-Zoquiapan, 24 I&N Dec. 549 (BIA 2008); Matter of Gonzalez-Silva, 24 I&N Dec. 218 (BIA 2007); and Matter of Garcia-Hernandez, 23 I&N Dec. 590 (BIA 2003), explained.

(2) In determining which offenses are "described under" sections 212(a)(2), 237(a)(2), and 237(a)(3) of the Act for purposes of section 240A(b)(1)(C) of the Act, only language specifically pertaining to the criminal offense, such as the offense itself and the sentence imposed or potentially imposed, should be considered.

(3) The respondent's misdemeanor conviction for welfare fraud in violation of section 10980(c)(2) of the California Welfare and Institutions Code rendered her ineligible for cancellation of removal under section 240A(b)(1)(C) of the Act, because it was for a crime involving moral turpitude for which she could have been sentenced to a year in county jail and was therefore for an offense "described under" section 237(a)(2) of the Act.

Child Pornography

Matter of Olquin, 23 I&N Dec. 896 (BIA 2006)

The offense of possession of child pornography in violation of section 827.071(5) of the Florida Statutes is a crime involving moral turpitude.

Child, Sexual Conduct With

Matter of Guevara-Alfaro, 25 I&N Dec. 417 (BIA 2011)

(1) Any intentional sexual conduct by an adult with a child involves moral turpitude, as long as the perpetrator knew or should have known that the victim was under the age of 16. Matter of Silva-Trevino, 24 I&N Dec. 687 (A.G. 2008), followed. Quintero-Salazar v. Keisler, 506 F.3d 688 (9th Cir. 2007), not followed.

(2) Absent otherwise controlling authority, Immigration Judges and the Board of Immigration Appeals are bound to apply all three steps of the procedural framework set forth by the Attorney General in Matter of Silva-Trevino for determining whether a particular offense constitutes a crime involving moral turpitude.

Controlled Substances

Matter of Khourn, 21 I&N Dec. 1041 (BIA 1997)

A conviction for distribution of cocaine under 21 U.S.C.§841(a)(1) (1988), is a conviction for a crime involving moral turpitude within the meaning of section 241(a)(2)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1251(a)(2)(A)(ii) (1994), where knowledge or intent is an element of the offense. Matter of Serna, 20 I&N Dec. 579 (BIA 1992), modified.

Matter of Zorilla-Vidal, 24 I&N Dec. 768 (BIA 2009)

Outside the jurisdiction of the United States Court of Appeals for the Ninth Circuit, a conviction for criminal solicitation under a State's general purpose solicitation statute is a conviction for a violation of a law relating to a controlled substance under section 237(a)(2)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(B)(i) (2006), where the record of conviction reflects that the crime solicited is an offense relating to a controlled substance. Matter of Beltran, 20 I&N Dec. 521 (BIA 1992), reaffirmed. *Coronado-Durazo v. INS*, 123 F.3d 1322 (9th Cir. 1997), followed in jurisdiction only.

Corporal Injury on a Spouse

Matter of Tran, 21 I&N Dec. 291 (BIA 1996)

Willful infliction of corporal injury on a spouse, cohabitant, or parent of the perpetrator's child, in violation of section 273.5(a) of the California Penal Code, constitutes a crime involving moral turpitude.

Date of Admission

Matter of Shanu, 23 I&N Dec. 754 (BIA 2005)(overruled in part by *Matter of Alyazju*)

(1) The phrase "date of admission" in section 237(a)(2)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(i) (2000), refers to, among other things, the date on which a previously admitted alien is lawfully admitted for permanent residence by means of adjustment of status.

(2) An alien convicted of a single crime involving moral turpitude that is punishable by a term of imprisonment of at least 1 year is removable from the United States under section 237(a)(2)(A)(i) of the Act if the crime was committed within 5 years after the date of any admission made by the alien, whether it be the first or any subsequent admission.

Matter of Carrillo, 25 I&N Dec. 99 (BIA 2009)

In determining whether an alien whose status was adjusted pursuant to section 1 of the Cuban Refugee Adjustment Act of November 1, 1966, Pub. L. No. 89-732, 80 Stat. 1161, is removable as an alien who has been convicted of a crime involving moral turpitude committed within 5 years after the alien's "date of admission," the admission date is calculated according to the rollback provision of section 1, rather than the date adjustment of status was granted.

***Matter of Alyazji*, 25 I&N Dec. 397 (BIA 2011)**

In general, an alien's conviction for a crime involving moral turpitude triggers removability under section 237(a)(2)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(i) (2006), only if the alien committed the crime within 5 years after the date of the admission by virtue of which he or she was then present in the United States. *Matter of Shanu*, 23 I&N Dec. 754 (BIA 2005), overruled in part.

Deadly Conduct

***Matter of O.A. Hernandez*, 26 I&N Dec. 464 (BIA 2015)**

The offense of "deadly conduct" in violation of section 22.05(a) of the Texas Penal Code, which punishes a person who "recklessly engages in conduct that places another in imminent danger of serious bodily injury," is categorically a crime involving moral turpitude.

Defined

***Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)**

(1) To determine whether a conviction is for a crime involving moral turpitude, immigration judges and the Board of Immigration Appeals should: (1) look to the statute of conviction under the categorical inquiry and determine whether there is a "realistic probability" that the State or Federal criminal statute pursuant to which the alien was convicted would be applied to reach conduct that does not involve moral turpitude; (2) if the categorical inquiry does not resolve the question, engage in a modified categorical inquiry and examine the record of conviction, including documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript; and (3) if the record of conviction is inconclusive, consider any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question.

(2) It is proper to make a categorical finding that a defendant's conduct involves moral turpitude when that conduct results in conviction on the charge of intentional sexual contact with a person the defendant knew or should have known was a child.

(3) To qualify as a crime involving moral turpitude for purposes of the Immigration and Nationality Act, a crime must involve both reprehensible conduct and some degree of scienter, whether specific intent, deliberateness, willfulness, or recklessness.

***Matter of Louissaint*, 24 I&N Dec. 754 (BIA 2009)**

(1) The categorical approach for determining if a particular crime involves moral turpitude set forth in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), requires the traditional categorical analysis, which was used by the United States Supreme Court in *Gonzales v. Duenas-Alvarez*, 549 U.S. 183 (2007), and includes an inquiry into whether there is a "realistic probability" that the statute under which the alien was convicted would be applied to reach conduct that does not involve moral turpitude.

(2) A conviction for burglary of an occupied dwelling in violation of section 810.02(3)(a) of the Florida Statutes is categorically a conviction for a crime involving moral turpitude. *Matter of M-*, 2 I&N Dec. 721 (BIA; A.G. 1946), distinguished.

***Matter of Guevara-Alfaro*, 25 I&N Dec. 417 (BIA 2011)**

(1) Any intentional sexual conduct by an adult with a child involves moral turpitude, as long as the perpetrator knew or should have known that the victim was under the age of 16. *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), followed. *Quintero-Salazar v. Keisler*, 506 F.3d 688 (9th Cir. 2007), not followed.

(2) Absent otherwise controlling authority, Immigration Judges and the Board of Immigration Appeals are bound to apply all three steps of the procedural framework set forth by the Attorney General in *Matter of Silva-Trevino* for determining whether a particular offense constitutes a crime involving moral turpitude.

***Matter of Silva-Trevino*, 26 I&N Dec. 550 (A.G. 2015)**

The Attorney General vacated the opinion in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008).

Divisible Statutes

***Matter of Lanferman*, 25 I&N Dec. 721 (BIA 2012)**

A criminal statute is divisible, regardless of its structure, if, based on the elements of the offense, some but not all violations of the statute give rise to grounds for removal or ineligibility for relief.

Domestic Battery

***Matter of Sanudo*, 23 I&N Dec. 968 (BIA 2006)**

(1) An alien's conviction for domestic battery in violation of sections 242 and 243(e)(1) of the California Penal Code does not qualify categorically as a conviction for a "crime involving moral turpitude" within the meaning of section 237(a)(2)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(ii) (2000).

(2) In removal proceedings arising within the jurisdiction of the United States Court of Appeals for the Ninth Circuit, the offense of domestic battery in violation of sections 242 and 243(e)(1) of the California Penal Code does not presently qualify categorically as a "crime of violence" under 18 U.S.C. § 16 (2000), such that it may be

considered a "crime of domestic violence" under section 237(a)(2)(E)(i) of the Act. Ortega-Mendez v. Gonzales, 450 F.3d 1010 (9th Cir. 2006), followed.

Driving Recklessly to Evade Police

***Matter of Ruiz-Lopez*, 25 I&N Dec. 551 (BIA 2011)**

(1) The offense of driving a vehicle in a manner indicating a wanton or willful disregard for the lives or property of others while attempting to elude a pursuing police vehicle in violation of section 46.61.024 of the Revised Code of Washington is a crime involving moral turpitude.

(2) The maximum sentence possible for an offense, rather than the standard range of sentencing under a State's sentencing guidelines, determines an alien's eligibility for the "petty offense" exception under section 212(a)(2)(A)(ii)(II) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II) (2006).

Driving Under the Influence

***Matter of Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999)**

Under Arizona law, the offense of aggravated driving under the influence, which requires the driver to know that he or she is prohibited from driving under any circumstances, is a crime involving moral turpitude.

***Matter of Torres-Varela*, 23 I&N Dec. 78 (BIA 2001)**

Under Arizona law, the offense of aggravated driving under the influence ("DUI") with two or more prior DUI convictions is not a crime involving moral turpitude. Matter of Lopez-Meza, 22 I&N Dec. 1188 (BIA 1999), distinguished.

Evidence

***Matter of Ahortalejo-Guzman*, 25 I&N Dec. 465 (BIA 2011)**

Evidence outside of an alien's record of conviction may properly be considered in determining whether the alien has been convicted of a crime involving moral turpitude only where the conviction record itself does not conclusively demonstrate whether the alien was convicted of engaging in conduct that constitutes a crime involving moral turpitude. *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), followed.

Failure to Register as Sex Offender

***Matter of Tobar-Lobo*, 24 I&N Dec. 143 (BIA 2007)**

Willful failure to register by a sex offender who has been previously apprised of the obligation to register, in violation of section 290(g)(1) of the California Penal Code, is a crime involving moral turpitude.

Falsely Obtaining a U.S. Passport

Matter of Pinzon, 26 I&N Dec. 189 (BIA 2013)

(1) An alien who enters the United States by falsely claiming United States citizenship is not deemed to have been inspected by an immigration officer, so the entry is not an "admission" under section 101(a)(13)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(13)(A) (2012).

(2) The offense of knowingly and willfully making any materially false, fictitious, or fraudulent statement to obtain a United States passport in violation of 18 U.S.C. § 1001(a)(2) (2006) is a crime involving moral turpitude.

Financial Violations

Matter of L-V-C-, 22 I&N Dec. 594 (BIA 1999)

An alien convicted of causing a financial institution to fail to file currency transaction reports and of structuring currency transactions to evade reporting requirements, in violation of 31 U.S.C. §§ 5324(1) and (3) (1998), whose offense did not include any morally reprehensible conduct, is not convicted of a crime involving moral turpitude. Matter of Goldeshtein, 20 I&N Dec. 382 (BIA 1991), rev'd, 8 F.3d 645 (9th Cir. 1993), overruled.

Incedent Exposure

Matter of Cortes-Medina, 26 I&N Dec. 79 (BIA 2013)

The offense of indecent exposure in violation of section 314(1) of the California Penal Code, which includes the element of lewd intent, is categorically a crime involving moral turpitude.

Misprision of a Felony

Matter of Robles, 24 I&N Dec. 22 (BIA 2006)

(1) When the Attorney General overrules or reverses only one holding in a precedent decision of the Board of Immigration Appeals and expressly declines to consider any alternative holding in the case, the remaining holdings retain their precedential value.

(2) Misprision of a felony in violation of 18 U.S.C. § 4 (2000) is a crime involving moral turpitude. Matter of Sloan, 12 I&N Dec. 840 (A.G. 1968; BIA 1966), overruled in part.

(3) Under the "stop-time" rule in section 240A(d)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(d)(1)(B) (2000), an offense is deemed to end an alien's continuous residence as of the date of its commission, even if the offense was committed prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546. Matter of Perez, 22 I&N Dec. 689 (BIA 1999), reaffirmed.

Money Laundering

***Matter of Tejwani*, 24 I&N Dec. 97 (BIA 2007)**

The offense of money laundering in violation of section 470.10(1) of the New York Penal Law is a crime involving moral turpitude.

Purely Political Offense

***Matter of O'Cealleagh*, 23 I&N Dec. 976 (BIA 2006)**

(1) In order for an offense to qualify for the "purely political offense" exception to the ground of inadmissibility under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) (2000), based on an alien's conviction for a crime involving moral turpitude, the offense must be completely or totally "political."

(2) The respondent is inadmissible where he properly conceded that his offense, substantively regarded, was not "purely political," and where there was substantial evidence that the offense was not fabricated or trumped-up and therefore did not qualify from a procedural perspective as a "purely political offense," because the circumstances surrounding his conviction in Northern Ireland for aiding and abetting the murder of two British corporals reflected a sincere effort to prosecute real lawbreakers.

Reckless Endangerment

***Matter of Leal*, 26 I&N Dec. 20 (BIA 2012)**

The offense of "recklessly endangering another person with a substantial risk of imminent death" in violation of section 13-1201(A) of the Arizona Revised Statutes is categorically a crime involving moral turpitude under the definition in Matter of Silva-Trevino, 24 I&N Dec. 687 (A.G. 2008), even though Arizona law defines recklessness to encompass a subjective ignorance of risk resulting from voluntary intoxication.

Section 212(c) Eligibility

***Matter of Fortiz*, 21 I&N Dec. 1199 (BIA 1998)**

(1) An alien who is deportable under section 241(a)(2)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1251(a)(2)(A)(ii) (1994), as an alien convicted of two or more crimes involving moral turpitude, and whose deportation proceedings were initiated prior to the April 24, 1996, enactment date of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 ("AEDPA"), is not ineligible for a waiver under section 212(c) of the Act (to be codified at 8 U.S.C. § 1182(c)) unless more than one conviction resulted in a sentence or confinement of 1 year or longer pursuant to the former version of section 241(a)(2)(A)(i)(II), prior to its amendment by the AEDPA.

(2) For an alien to be barred from eligibility for a waiver under section 212(c) of the Act as one who "is deportable" by reason of having committed a criminal offense covered by one of the criminal deportation grounds enumerated in the statute, he or she must have been charged with, and found deportable on, such grounds.

Stalking

***Matter of Ajami*, 22 I&N Dec. 949 (BIA 1999)**

The offense of aggravated stalking pursuant to section 750.411i of the Michigan Compiled Laws Annotated is a crime involving moral turpitude.

***Matter of Sanchez-Lopez*, 26 I&N Dec. 71 (BIA 2012)**

The offense of stalking in violation of section 646.9 of the California Penal Code is "a crime of stalking" under section 237(a)(2)(E)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(E)(i) (2006).

Theft

***Matter of Jurado*, 24 I&N Dec. 29 (BIA 2006)**

(1) An alien need not be charged and found inadmissible or removable on a ground specified in section 240A(d)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(d)(1)(B) (2000), in order for the alleged criminal conduct to terminate the alien's continuous residence in this country.

(2) Retail theft in violation of title 18, section 3929(a)(1) of the Pennsylvania Consolidated Statutes is a crime involving moral turpitude.

(3) Unsworn falsification to authorities in violation of title 18, section 4904(a) of the Pennsylvania Consolidated Statutes is a crime involving moral turpitude.

Trafficking in Counterfeit Goods

***Matter of Kochlani*, 24 I&N Dec. 128 (BIA 2007)**

The offense of trafficking in counterfeit goods or services in violation of 18 U.S.C. 2329 (2000) is a crime involving moral turpitude.

Vandalism (Gang Related)

> ***Matter of E.E. Hernandez, 26 I&N Dec. 397 (BIA 2014)***
>
> > *Malicious vandalism in violation of section 594(a) of the California Penal Code with a gang enhancement under section 186.22(d) of the California Penal Code, which requires that the underlying offense be committed for the benefit of a criminal street gang with the specific intent to promote criminal conduct by gang members, is categorically a crime involving moral turpitude.*

Welfare Fraud

***Matter of Cortez*, 25 I&N Dec. 301 (BIA 2010)**

(1) An alien who has been convicted of a crime involving moral turpitude for which a sentence of a year or longer may be imposed has been convicted of an offense "described under" section 237(a)(2) of the Act, 8 U.S.C. § 1227(a)(2) (2006), and is therefore ineligible for cancellation of removal under section 240A(b)(1)(C) of the Act, 8 U.S.C. § 1229b(b)(1)(C) (2006), regardless of the alien's eligibility for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II) (2006). Matter of Almanza, 24 I&N Dec. 771 (BIA 2009), clarified. Matter of Gonzalez-Zoquiapan, 24 I&N Dec. 549 (BIA 2008); Matter of Gonzalez-Silva, 24 I&N Dec. 218 (BIA 2007); and Matter of Garcia-Hernandez, 23 I&N Dec. 590 (BIA 2003), explained.

(2) In determining which offenses are "described under" sections 212(a)(2), 237(a)(2), and 237(a)(3) of the Act for purposes of section 240A(b)(1)(C) of the Act, only language specifically pertaining to the criminal offense, such as the offense itself and the sentence imposed or potentially imposed, should be considered.

(3) The respondent's misdemeanor conviction for welfare fraud in violation of section 10980(c)(2) of the California Welfare and Institutions Code rendered her ineligible for cancellation of removal under section 240A(b)(1)(C) of the Act, because it was for a crime involving moral turpitude for which she could have been sentenced to a year in county jail and was therefore for an offense "described under" section 237(a)(2) of the Act.

CRIMINAL CONVICTIONS

Court Martial

Matter of Rivera-Valencia, 24 I&N Dec. 484 (BIA 2008)

A judgment of guilt that has been entered by a general court-martial of the United States Armed Forces qualifies as a "conviction" within the meaning of section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A) (2000).

Matter of Chavez-Alvarez, 26 I&N Dec. 274 (BIA 2014)

(1) Adjustment of status constitutes an "admission" for purposes of determining an alien's removability under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(iii) (2012), as an alien convicted of an aggravated felony "at any time after admission." Matter of Rosas, 22 I&N Dec. 616 (BIA 1999), reaffirmed.

(2) An element listed in a specification in the Manual for Courts-Martial ("MCM"), which must be pled and proved beyond a reasonable doubt, is the functional equivalent of an "element" of a criminal offense for immigration purposes.

(3) The crime of sodomy by force in violation of article 125 of the Uniform Code of Military Justice, 10 U.S.C. § 925 (2000), and the Punitive Articles of the MCM relating to sodomy, is a crime of violence under 18 U.S.C. § 16 (2012) within the definition of an aggravated felony under section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F)(2012).

Finality

Matter of Thomas, 21 I&N Dec. 20 (BIA 1995)

(1) Inasmuch as a conviction does not attain a sufficient degree of finality for immigration purposes until direct appellate review has been exhausted or waived, a non-final conviction cannot support a charge of deportability, and likewise does not trigger a statutory bar to relief, under a section of the Immigration and Nationality Act premised on the existence of a conviction.

(2) In determining whether an application for relief is merited as a matter of discretion, evidence of unfavorable conduct, including criminal conduct which has not culminated in a final conviction for purposes of the Act, may be considered.

(3) When considering evidence of criminality in conjunction with an application for discretionary relief, the probative value of and corresponding weight, if any, assigned to that evidence will vary according to the facts and circumstances of each case and the nature and strength of the evidence presented.

Matter of Chairez, 21 I&N Dec. 44 (BIA 1995)

(1) A right to appeal such issues as whether a violation of probation has occurred or the sentence imposed upon entry of judgment was correct will not prevent a finding of a final conviction for immigration purposes under the third prong of the standard set forth in Matter of Ozkok, 19 I&N Dec. 546 (BIA 1988), which requires that any further proceedings available to an alien must relate to the issue of "guilt or innocence of the original charge."

(2) After a breach of a condition of an order deferring judgment and sentence under Colorado Revised Statutes § 16-7-403, no further proceedings are available to a defendant to contest his guilt.

(3) Where the period during which the respondent's judgment and sentence were deferred under Colorado law had been completed, any right he may have had to appeal had lapsed and could no longer prevent a finding that his conviction was final.

Matter of Cardenas-Abreu, 24 I&N Dec. 795 (BIA 2009)

A pending late-reinstated appeal of a criminal conviction, filed pursuant to section 460.30 of the New York Criminal Procedure Law, does not undermine the finality of the conviction for purposes of the immigration laws.

Foreign Convictions

Matter of Dillingham, 21 I&N Dec. 1001 (BIA 1997)

The expungement of an alien's foreign drug-related conviction pursuant to a foreign rehabilitation statute is not effective to prevent a finding of his inadmissibility pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II) (1994), even if he would have been eligible for federal first offender

treatment under the provisions of 18U.S.C. § 3607(a) (1994) had he been prosecuted in the United States. Matter of Manrique, 21 I&N Dec. 3250 (BIA 1995), distinguished.

Matter of Pickering, 23 I&N Dec. 621 (BIA 2003)

(1) If a court vacates an alien's conviction for reasons solely related to rehabilitation or immigration hardships, rather than on the basis of a procedural or substantive defect in the underlying criminal proceedings, the conviction is not eliminated for immigration purposes.

(2) Where the record indicated that the respondent's conviction for possession of a controlled substance was quashed by a Canadian court for the sole purpose of avoiding the bar to his acquisition of permanent residence, the court's action was not effective to eliminate the conviction for immigration purposes.

Deferred Adjudication

Matter of Punu, 22 I&N Dec. 224 (BIA 1998)

(1) The third prong of the standard for determining whether a conviction exists with regard to deferred adjudications has been eliminated pursuant to section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A) (Supp. II 1996). Matter of Ozkok, 19 I&N Dec. 546 (BIA 1988), superseded.

(2) A deferred adjudication under article 42.12, § 5 of the Texas Code of Criminal Procedure is a conviction for immigration purposes.

Municipal Ordinances

Matter of Cuellar-Gomez, 25 I&N Dec. 850 (BIA 2012)

(1) A formal judgment of guilt of an alien entered by a municipal court is a "conviction" under section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A) (2006), if the proceedings in which the judgment was entered were genuine criminal proceedings. *Matter of Rivera-Valencia*, 24 I&N Dec. 484 (BIA 2008), and *Matter of Eslamizar*, 23 I&N Dec. 684 (BIA 2004), followed.

(2) A Wichita, Kansas, municipal ordinance which recapitulates a Kansas statute prohibiting marijuana possession is a "law or regulation of a State . . . relating to a controlled substance" under section 237(a)(2)(B)(i) of the Act, 8 U.S.C. § 1227(a)(2)(B)(i) (2006).

(3) Possession of marijuana after a prior municipal ordinance conviction for marijuana possession in violation of former sections 65-4162(a) and (b) of the Kansas Statutes Annotated is an aggravated felony under section 101(a)(43)(B) of the Act by virtue of its correspondence to the Federal felony of "recidivist possession," 21 U.S.C. § 844 (2006), provided the prior conviction was final when the second offense was committed. Lopez v. Gonzales, 549 U.S. 47 (2006), followed; Carachuri-Rosendo v. Holder, 130 S. Ct. 2577 (2010), and Matter of Carachuri-Rosendo, 24 I&N Dec. 382 (BIA 2007), distinguished.

Naturalization

Matter of Gonzales-Muro, 24 I&N Dec. 472 (BIA 2008)

A denaturalized alien who committed crimes while a lawful permanent resident and concealed them during the naturalization application process is removable on the basis of the crimes, even though the alien was a naturalized citizen at the time of conviction. *Costello v. INS*, 376 U.S. 120 (1964), distinguished.

Pardons

Matter of Suh, 23 I&N Dec. 626 (BIA 2003)

(1) A presidential or gubernatorial pardon waives only the grounds of removal specifically set forth in section 237(a)(2)(A)(v) of the Immigration and Nationality Act, 8 U.S.C. §1227(a)(2)(A)(v) (2000), and no implicit waivers may be read into the statute.

(2) The respondent's pardon did not waive his removability as an alien convicted of domesticviolence or child abuse under section 237(a)(2)(E)(i) of the Act, because that section is not specifically included in section 237(a)(2)(A)(v).

Penalty or Punishment

Matter of Cabrera, 24 I&N Dec. 459 (BIA 2008)

The imposition of costs and surcharges in the criminal sentencing context constitutes a form of "punishment" or "penalty" for purposes of establishing that an alien has suffered a "conviction" within the meaning of section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(48)(A) (2000).

Records of Conviction

Matter of Teixeira, 21 I&N Dec. 316 (BIA 1996)

(1) Where the statute under which an alien was convicted encompasses offenses that constitute firearms violations and offenses that do not, the Board of Immigration Appeals looks to the record of conviction, and to other documents admissible as evidence in proving a criminal conviction, to determine whether the specific offense of which the alien was convicted constitutes a firearms violation within the meaning of section 241(a)(2)(C) of Immigration and Nationality Act, 8 U.S.C. § 1251(a)(2)(C) (Supp. V 1993).

(2) A police report, standing alone, is not part of a "record of conviction," nor does it fit any of the regulatory descriptions found at 8 C.F.R. § 3.41 (1995) for documents that are admissible as evidence in any proceeding before an Immigration Judge in proving a criminal conviction, and it therefore should not be considered in determining whether the specific offense of which an alien was convicted constituted a firearms violation.

(3) Although a police report concerning circumstances of arrest that is not part of a record of conviction is appropriately admitted into evidence for the purpose of considering an application for discretionary relief, it should not be considered for the purpose of determining deportability where the Act mandates a focus on a criminal conviction, rather than on conduct.

Matter of Madrigal, 21 I&N Dec. 323 (BIA 1996)

(1) Where the statute under which an alien has been convicted encompasses offenses that constitute firearms violations and offenses that do not, the Immigration and Naturalization Service must establish through the record of conviction, and other documents admissible as evidence in proving a criminal conviction, that the specific offense of which the alien was convicted constitutes a firearms violation within the meaning of section 241(a)(2)(C) of Immigration and Nationality Act, 8 U.S.C. § 1251(a)(2)(C) (1994).

(2) The transcript from the respondent's plea and sentence hearing, during which the respondent admitted possession of a firearm, is part of the record of conviction and, consequently, was sufficient to establish that the respondent had been convicted of a firearms offense and was deportable under section 241(a)(2)(C) of the Act.

(3) The respondent's right to counsel was not violated where the Immigration Judge properly informed the respondent of his right to counsel and provided him with adequate opportunity to obtain representation.

Matter of Pichardo, 21 I&N Dec. 330 (BIA 1996)

(1) Where the statute under which an alien has been convicted encompasses offenses that constitute firearms violations and offenses that do not, the Board of Immigration Appeals will look beyond the statute, but only to consider such facts which appear from the record of conviction, or other documents admissible under federal regulations as evidence in proving a criminal conviction, to determine whether the specific offense for which the alien was convicted constitutes a firearms violation within the meaning of section 241(a)(2)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1251(a)(2)(C) (1994).

(2) Where the only criminal court document offered into the record to prove an alien's deportability under section 241(a)(2)(C) of the Act consists of a Certificate of Disposition which fails to identify the subdivision under which the alien was convicted or the weapon that he was convicted of possessing, deportability has not been established, even where the alien testifies that the weapon in his possession at the time of his arrest was a gun, since it is the crime that the alien was convicted of rather than a crime that he may have committed which determines whether he is deportable.

Matter of Milian, 25 I&N Dec. 197 (BIA 2010)

In applying the modified categorical approach to assess an alien's conviction, it is proper to consider the contents of police reports as part of the record of conviction if they were specifically incorporated into the guilty plea or were admitted by the alien during the criminal proceedings.

***Matter of J.R. Velasquez*, 25 I&N Dec. 680 (BIA 2012)**

(1) The documents listed in section 240(c)(3)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(3)(B) (2006), and 8 C.F.R. § 1003.41(a) (2011) are admissible as evidence of a criminal conviction in immigration proceedings, but pursuant to 8 C.F.R. § 1003.41(d), other probative evidence may also be admitted to prove a conviction in the discretion of the Immigration Judge.

(2) Conviction records that were submitted by electronic means are conclusively admissible as evidence of a criminal conviction in immigration proceedings if they are authenticated in the manner specified by section 240(c)(3)(C) of the Act and 8 C.F.R. § 1003.41(c), but those methods of authentication, which operate as "safe harbors," are not mandatory or exclusive, and documents that are authenticated in other ways may be admitted if they are found to be reliable.

(3) A document that requires authentication but that is not authenticated is not admissible as "other evidence that reasonably indicates the existence of a criminal conviction" within the meaning of 8 C.F.R. § 1003.41(d).

Rehabilitative Statutes

***Matter of Manrique*, 21 I&N Dec. 58 (BIA 1995) (superseded by *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999))**

As a matter of policy in cases dealing with drug-related convictions under state law, any alien who has been accorded rehabilitative treatment pursuant to a state statute will not be deported if he establishes that he would have been eligible for federal first offender treatment under the provisions of 18 U.S.C. § 3607(a) (1988) had he been prosecuted under federal law. Matter of Deris, 20 I&N Dec. 5 (BIA 1989); Matter of Garcia, 19 I&N Dec. 270 (BIA 1985); Matter of Carrillo, 19 I&N Dec. 77 (BIA 1984); Matter of Forstner, 18 I&N Dec. 374 (BIA 1983); Matter of Golshan, 18 I&N Dec. 92 (BIA 1981); Matter of Kaneda, 16 I&N Dec. 677 (BIA 1979); Matter of Haddad, 16 I&N Dec. 253 (BIA 1977); and Matter of Werk, 16 I&N Dec. 234 (BIA 1977), modified.

***Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999)**

(1) Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A) (Supp. II 1996), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute.

(2) With the enactment of the federal statute defining "conviction" with respect to an alien, our decisions in Matter of G-, 9 I&N Dec. 159 (BIA 1960, A.G. 1961); Matter of Ibarra-Oband, 12 I&N Dec. 576 (BIA 1966, A.G. 1967); Matter of Luviano, 21 I&N Dec. 235 (BIA 1996), and others which address the impact of state rehabilitative actions on whether an alien is "convicted" for immigration purposes are no longer controlling.

(3) Once an alien is subject to a "conviction" as that term is defined at section 101(a)(48)(A) of the Act, the alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt through a rehabilitative procedure.

(4) The policy exception in Matter of Manrique, 21 I&N Dec. 58 (BIA 1995), which accorded federal first offender treatment to certain drug offenders who had received state rehabilitative treatment is superseded by the enactment of section 101(a)(48)(A), which gives no effect to state rehabilitative actions in immigration proceedings. Matter of Manrique, supra, superseded.

(5) An alien, who has had his guilty plea to the offense of possession of a controlled substance vacated and his case dismissed upon termination of his probation pursuant to section 19-2604(1) of the Idaho Code, is considered to have a conviction for immigration purposes.

Matter of Rodriguez-Ruiz, 22 I&N Dec. 1378 (BIA 2000)

A conviction that has been vacated pursuant to article 440 of the New York Criminal Procedure Law does not constitute a conviction for immigration purposes within the meaning of section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(48)(A) (Supp. IV 1998). Matter of Roldan, 22 I&N Dec. 512 (BIA 1999), distinguished.

Matter of Salazar, 23 I&N Dec. 223 (BIA 2002)

(1) An alien whose adjudication of guilt was deferred pursuant to article 42.12, section 5(a) of the Texas Code of Criminal Procedure following her plea of guilty to possession of a controlled substance is considered to have been convicted of the offense. Matter of Roldan, 22 I&N Dec. 512 (BIA 1999), reaffirmed.

(2) In Lujan-Armendariz v. INS, 222 F.3d 728 (9th Cir. 2000), the United States Court of Appeals for the Ninth Circuit overruled in part Matter of Roldan, supra, which will not be applied in cases arising within the jurisdiction of the Ninth Circuit.

(3) In light of the decisions in United States v. Hernandez-Avalos, 251 F.3d 505 (5th Cir. 2000), cert. denied, 122 S. Ct. 305 (2001), and United States v. Hinojosa-Lopez, 130 F.3d 691 (5th Cir. 1997), the decision of the Board of Immigration Appeals in Matter of K-V-D-, 22 I&N Dec. 1163 (BIA 1999), will not be applied in cases arising within the jurisdiction of the Fifth Circuit.

Matter of Luviano, 23 I&N Dec. 718 (A.G. 2005) (decided by Board February 29, 1996; decided by Attorney General January 18, 2005)

An alien whose firearms conviction was expunged pursuant to section 1203.4 of the California Penal Code has been "convicted" for immigration purposes. Matter of Marroquin, 23 I&N Dec. 705 (A.G. 2005), followed.

Matter of Marroquin, 23 I&N Dec. 705 (A.G. 2005)

(1) The federal definition of "conviction" at section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A) (2000), encompasses convictions, other than those involving first-time simple possession of narcotics, that have been vacated or set aside pursuant to an expungement statute for reasons that do not go to the legal propriety of the original judgment, and that continue to impose some restraints or penalties upon the defendant's liberty.

(2) An alien whose firearms conviction was expunged pursuant to section 1203.4 of the California Penal Code has been "convicted" for immigration purposes.

***Matter of Cabrera*, 24 I&N Dec. 459 (BIA 2008)**

The imposition of costs and surcharges in the criminal sentencing context constitutes a form of "punishment" or "penalty" for purposes of establishing that an alien has suffered a "conviction" within the meaning of section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(48)(A) (2000).

Sentence

***Matter of Esposito*, 21 I&N Dec. 1 (BIA 1995)**

(1) For purposes of section 212(a)(10) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(10) (1988), and its successor provision at section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B) (Supp. V 1993), a sentence is "actually imposed" where a criminal court suspends the execution of a sentence, but no sentence is "actually imposed" where the imposition of sentence is suspended. Matter of Castro, 19 I&N Dec. 692 (1988), followed.

(2) Section 212(c) of the Act is ineffective to waive deportability under former section 241(a)(14) of the Act, 8 U.S.C. § 1251(a)(14) (1988), or section 241(a)(2)(C) of the Act, 8 U.S.C. § 1251(a)(2)(C) (Supp. V 1993), for conviction of a firearms violation, even where the firearms violation is one of two or more crimes which may render the alien inadmissible under section 212(a)(10) [now section 212(a)(2)(B)] of the Act. Matter of Montenegro, 20 I&N Dec. 603 (BIA 1992); Matter of Hernandez-Casillas, 20 I&N Dec. 262 (BIA 1990; A.G. 1991), aff'd, 983 F.2d 231 (5th Cir. 1993); and Matter of Wadud, 19 I&N Dec. 182 (BIA 1984), followed.

***Matter of Perez-Ramirez*, 25 I&N Dec. 203 (BIA 2010)**

(1) Where a criminal alien's sentence has been modified to include a term of imprisonment following a violation of probation, the resulting sentence to confinement is considered to be part of the penalty imposed for the original underlying crime, rather than punishment for a separate offense. (2) An alien's misdemeanor conviction for willful infliction of corporal injury on a spouse in violation of section 273.5(a) of the California Penal Code qualifies categorically as a conviction for a "crime of violence" within the meaning of 18 U.S.C. § 16(a) (2006).

Single Scheme

***Matter of Islam*, 25 I&N Dec. 637 (BIA 2011)**

(1) In determining whether an alien's convictions for two or more crimes involving moral turpitude arose out of a "single scheme of criminal misconduct" within the meaning of section 237(a)(2)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(ii) (2006), the Board will uniformly apply its interpretation of that phrase in all circuits. Matter of Adetiba, 20 I&N Dec. 506 (BIA 1992), followed.

(2) Where the respondent was convicted in two counties of forgery and possession of stolen property based on his use of multiple stolen credit or debit cards to obtain items of value from several retail outlets on five separate occasions over the course of a day, his crimes did not arise out of a "single scheme of criminal misconduct."

Vacated Convictions

***Matter of Song*, 23 I&N Dec. 173 (BIA 2001)**

Where a criminal court vacated the 1-year prison sentence of an alien convicted of a theft offense and revised the sentence to 360 days of imprisonment, the alien does not have a conviction for an aggravated felony within the meaning of section 101(a)(43)(G) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(43)(G) (Supp. V 1999).

***Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003)**

(1) If a court vacates an alien's conviction for reasons solely related to rehabilitation or immigration hardships, rather than on the basis of a procedural or substantive defect in the underlying criminal proceedings, the conviction is not eliminated for immigration purposes.

(2) Where the record indicated that the respondent's conviction for possession of a controlled substance was quashed by a Canadian court for the sole purpose of avoiding the bar to his acquisition of permanent residence, the court's action was not effective to eliminate the conviction for immigration purposes.

***Matter of Cota-Vargas*, 23 I&N Dec. 849 (BIA 2005)**

A trial court's decision to modify or reduce an alien's criminal sentence nunc pro tunc is entitled to full faith and credit by the Immigration Judges and the Board of Immigration Appeals, and such a modified or reduced sentence is recognized as valid for purposes of the immigration law without regard to the trial court's reasons for effecting the modification or reduction.*Matter of Song*, 23 I&N Dec. 173 (BIA 2001), clarified; *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), distinguished.

***Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006)**

A conviction vacated pursuant to section 2943.031 of the Ohio Revised Code for failure of the trial court to advise the alien defendant of the possible immigration consequences of a guilty plea is no longer a valid conviction for immigration purposes.

***Matter of Chavez-Martinez*, 24 I&N Dec. 272 (BIA 2007)**

(1) An alien seeking to reopen proceedings to establish that a conviction has been vacated bears the burden of proving that the conviction was not vacated solely for immigration purposes.

(2) Where the respondent presented no evidence to prove that his conviction was not vacated solely for immigration purposes, he failed to meet his burden of showing that his motion to reopen should be granted.

Violations

***Matter of Eslamizar*, 23 I&N Dec. 684 (BIA 2004)**

An alien found guilty of a "violation" under Oregon law in a proceeding conducted pursuant to section 153.076 of the Oregon Revised Statutes does not have a "conviction" for immigration purposes under section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A) (2000).

Youthful Offenders

***Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000)**

(1) An adjudication of youthful offender status pursuant to Article 720 of the New York Criminal Procedure Law, which corresponds to a determination of juvenile delinquency under the Federal Juvenile Delinquency Act, 18 U.S.C. §§ 5031-5042 (1994 & Supp. II 1996), does not constitute a judgment of conviction for a crime within the meaning of section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A) (Supp. IV 1998).

***Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013)**

(1) A grant of asylum is not an "admission" to the United States under section 101(a)(13)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(13)(A) (2006).

(2) When termination of an alien's asylum status occurs in conjunction with removal proceedings pursuant to 8 C.F.R. § 1208.24 (2013), the Immigration Judge should ordinarily make a threshold determination regarding the termination of asylum status before resolving issues of removability and eligibility for relief from removal.

(3) An adjudication of "youthful trainee" status pursuant to section 762.11 of the Michigan Compiled Laws is a "conviction" under section 101(a)(48)(A) of the Act because such an adjudication does not correspond to a determination of juvenile delinquency under the Federal Juvenile Delinquency Act, 18 U.S.C. §§ 5031-5042 (2006). Matter of Devison, 22 I&N Dec. 1362 (BIA 2000), followed.

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