

## **9 FAM 40.21(A) N2 MORAL TURPITUDE**

### **9 FAM 40.21(a) N2.1 Evaluating Moral Turpitude Based Upon Statutory Definition of Offense and U.S. Standards**

*(CT:VISA-753; 06-29-2005)*

To render an alien ineligible under INA 212(a)(2)(A)(i)(I), the conviction must be for a statutory offense, which involves moral turpitude. The presence of moral turpitude is determined by the nature of the *statutory* offense for which the alien was convicted, and *not by the acts* underlying the conviction. Therefore, evidence relating to the underlying act, including the testimony of the applicant, is not relevant to a determination of whether the conviction involved moral turpitude except when the statute is divisible (see 9 FAM 40.21(a) N5.2) or a political offense (see 9 FAM 40.21(a) N10). The presence of moral turpitude in a statutory offense is determined according to *United States law*.

### **9 FAM 40.21(a) N2.2 Defining “Moral Turpitude”**

*(CT:VISA-753; 06-29-2005)*

*Statutory definitions of crimes in the United States consist of various elements, which must be met before a conviction can be supported. Some of these elements have been determined in judicial or administrative decisions to involve moral turpitude. A conviction for a statutory offense will involve moral turpitude if one or more of the elements of that offense have been determined to involve moral turpitude. The most common elements involving moral turpitude are:*

- (1) Fraud;*
- (2) Larceny; and*
- (3) Intent to harm persons or thing.*

### **9 FAM 40.21(a) N2.3 Common Crimes Involving Moral Turpitude**

*(TL:VISA-29; 01-12-1990)*

Categorized below are some of the more common crimes, which are considered to involve moral turpitude. Each category is followed by a separate list of related crimes, which are held not to involve moral turpitude.

## **9 FAM 40.21(a) N2.3-1 Crimes Committed Against Property**

*(CT:VISA-753; 06-29-2005)*

a. Most crimes committed against property that involve moral turpitude include the necessary element of fraud. The act of fraud involves moral turpitude whether it is aimed against individuals or government. Fraud generally involves:

- (1) Making false representation;
- (2) Knowledge of such false representation by the perpetrator;
- (3) Reliance on the false representation by the person defrauded;
- (4) An intent to defraud; and
- (5) The actual act of committing fraud

b. Other crimes committed against property involving moral turpitude involve an inherently evil intent, such as the act of arson. The following list comprises crimes frequently committed against property, which may be held to involve moral turpitude for the purposes of visa issuance:

- (1) Arson;
- (2) Blackmail;
- (3) Burglary;
- (4) Embezzlement;
- (5) Extortion;
- (6) False pretenses;
- (7) Forgery;
- (8) Fraud;
- (9) Larceny (grand or petty);
- (10) Malicious destruction of property;

- (11) Receiving stolen goods (with guilty knowledge);
  - (12) Robbery;
  - (13) Theft (when it involves the intention of permanent taking); and
  - (14) Transporting stolen property (with guilty knowledge).
- c. Crimes against property which do not fall within the definition of moral turpitude include:
- (1) Damaging private property (where *intent to damage* not required);
  - (2) Breaking and entering (requiring no specific or implicit intent to commit a crime involving moral turpitude);
  - (3) Passing bad checks (where intent *to defraud* not required);
  - (4) Possessing stolen property (if guilty knowledge is not essential);
  - (5) Joy riding (where the intention to take permanently not required);  
and
  - (6) Juvenile delinquency

## **9 FAM 40.21(a) N2.3-2 Crimes Committed Against Governmental Authority**

*(CT:VISA-753; 06-29-2005)*

- a. Crimes committed against governmental authority which fall within the definition of moral turpitude include:
- (1) Bribery;
  - (2) Counterfeiting;
  - (3) Fraud against revenue or other government functions;
  - (4) Mail fraud;
  - (5) Perjury;
  - (6) Harboring a fugitive from justice (with guilty knowledge); and
  - (7) Tax evasion (willful).
- b. Crimes committed against governmental authority, which would not

constitute moral turpitude for visa-issuance purposes, are, in general, violation of laws which are regulatory in character and which do not involve the element of fraud or other evil intent do not involve moral turpitude. The following list assumes that the statutes involved do not require the showing of an intent to defraud, or commit other evil:

- (1) Black market violations;
- (2) Breach of the peace;
- (3) Carrying a concealed weapon;
- (4) Desertion from the Armed Forces;
- (5) Disorderly conduct;
- (6) Drunk or reckless driving;
- (7) Drunkenness;
- (8) Escape from prison;
- (9) Failure to report for military induction;
- (10) False statements (not amounting to perjury or involving fraud);
- (11) Firearms violations;
- (12) Gambling violations;
- (13) Immigration violations;
- (14) Liquor violations;
- (15) Loan sharking;
- (16) Lottery violations;
- (17) Possessing burglar tools (without intent to commit burglary);
- (18) Smuggling and customs violations (where intent to commit fraud is absent);
- (19) Tax evasion (*without intent to defraud*); and
- (20) Vagrancy

## **9 FAM 40.21(a) N2.3-3 Crimes Committed Against Person, Family Relationship, and Sexual Morality**

*(TL:VISA-384; 04-03-2002)*

- a. Crimes committed against the person, family relationship, and sexual morality, which constitute moral turpitude as it relates to visa issuance, include:
  - (1) Abandonment of a minor child (if willful and resulting in the destitution of the child);
  - (2) Adultery (see INA 101(f)(2) repealed by Public Law 97-116);
  - (3) Assault (this crime is broken down into several categories, which involve moral turpitude):
    - (a) Assault with intent to kill;
    - (b) Assault with intent to commit rape;
    - (c) Assault with intent to commit robbery;
    - (d) Assault with intent to commit serious bodily harm; and
    - (e) Assault with a dangerous or deadly weapon (some weapons may be found to be lethal as a matter of law, while others may or may not be found factually to be such, depending upon all the circumstances in the case. Such circumstances may include, but are not limited to, the size of the weapon, the manner of its use, and the nature and extent of injuries inflicted.);
  - (4) Bigamy;
  - (5) Contributing to the delinquency of a minor;
  - (6) Gross indecency;
  - (7) Incest (if the result of an improper sexual relationship);
  - (8) Kidnapping;
  - (9) Lewdness;
  - (10) Manslaughter:
    - (a) Voluntary; and

(b) Involuntary, where the statute requires proof of recklessness, which is defined as the awareness and conscious disregard of a substantial and unjustified risk which constitutes a gross deviation from the standard that a reasonable person would observe in the situation. A conviction for the statutory offense of vehicular homicide or other involuntary manslaughter only requires a showing of negligence will not involve moral turpitude even if it appears the defendant in fact acted recklessly.

(11) Mayhem;

(12) Murder;

(13) Pandering;

(14) Prostitution;

(15) Rape (By statute, a person may be convicted of statutory rape even though the female consents and provided she is under the statutory age at the time of the commission of the act. "Statutory rape" is also deemed to involve moral turpitude.); and

(16) Sodomy

b. Crimes committed against the person, family relationship, or sexual morality which do not involve moral turpitude include:

(1) Assault (simple) (i.e., any assault, which does not require an evil intent or depraved motive, although it may involve the use of a weapon, which is neither dangerous nor deadly);

(2) Bastardy (i.e., the offense of begetting a bastard child);

(3) Creating or maintaining a nuisance (where knowledge that premises were used for prostitution is not necessary);

(4) Fornication;

(5) Incest (when a result of a marital status prohibited by law);

(6) Involuntary manslaughter (when killing is not the result of recklessness);

(7) Libel;

(8) Mailing an obscene letter;

- (9) Mann Act violations (where coercion is not present);
- (10) Riot; and
- (11) Suicide (attempted)

## **9 FAM 40.21(a) N2.4 Attempts, Aiding and Abetting, Accessories and Conspiracy**

*(CT:VISA-753; 06-29-2005)*

- a. The following types of crimes are held to be crimes involving moral turpitude:
  - (1) An attempt to commit a crime deemed to involve moral turpitude;
  - (2) Aiding and abetting in the commission of a crime deemed to involve moral turpitude;
  - (3) Being an accessory (before or after the fact) in the commission of a crime deemed to involve moral turpitude; and
  - (4) Taking part in a conspiracy (or attempting to take part in a conspiracy) to commit a crime involving moral turpitude
- b. Conversely, where an alien has been convicted of, or admits having committed the essential elements of, a criminal attempt, or a criminal act of aiding and abetting, accessory before or after the fact, or conspiracy, and the underlying crime is not deemed to involve moral turpitude, then INA 212(a)(2)(A)(i)(I) would not be applicable.

## **9 FAM 40.21(A) N3 CASES IN WHICH CONVICTION EXISTS**

### **9 FAM 40.21(a) N3.1 Defining Conviction**

*(CT:VISA-753; 06-29-2005)*

INA 101(A)(48) defines "conviction" as either:

- (1) A formal judgment of guilt entered by a court; or*
- (2) If adjudication has been withheld,*