

Standard Language for CIMT Categorical Approach

In *Matter of Silva-Trevino*, the Attorney General created “an administrative framework for determining whether an alien has been convicted of a crime involving moral turpitude.” *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689 (A.G. 2008). The Attorney General noted that the variety of approaches created by the circuit courts has resulted in “a patchwork of conflicting legal and evidentiary standards” containing “shortcomings which point to the need for a new, standardized approach.” *Id.* at 688.

When determining if a conviction constitutes a crime involving moral turpitude under the Act, Immigration Judges are directed to take a two step approach. *Silva-Trevino*, 24 I&N Dec. at 696-704. The first step is the categorical approach where the judge must determine if there is a realistic probability, not a theoretical possibility that the criminal statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698. In *Silva-Trevino*, the Attorney General was able to determine that there was a realistic probability that the statute in question could reach non-CIMT conduct by finding and citing to a criminal case where this actually happened. *See id.* at 708.

If there is a realistic probability that the criminal statute could reach non-CIMT conduct, the judges should proceed with step two, the modified categorical approach. *Id.* at 698. In doing this, first, judges should examine whether the record of conviction demonstrates a crime that in fact involved moral turpitude. *Id.* at 704. This includes documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* When the record is inconclusive, judges may, to the extent they deem it necessary and appropriate, consider evidence beyond the formal record of conviction with the goal to discern the nature of the conviction, not relitigating the facts or determinations made in the criminal proceeding. *Id.* The evidentiary limitations of Taylor and Shepard do not apply for purposes of making moral turpitude determinations. *Id.* at 702. No wooden rule should govern an immigration judge’s resort to information beyond the record of conviction. *Id.* at 703. A hierarchy of evidence certainly may be appropriate to ensure administrative workability and to avoid engaging in a retrial of the alien’s prior crime. *Id.*

Note that if there is no realistic probability that the statute would be applied to reach non-CIMT conduct, then any conviction under that statute is a CIMT.