The Categorical Approach in a Nutshell

The categorical and modified categorical approaches are used in most cases to determine if a state criminal conviction triggers a particular federal criminal ground of removability. This reference guide demonstrates the approach's underpinnings and should be used in conjunction with training and other resource materials.

Categorical Match

STATE OFFENSE
It is a Class 3 Felony to:
Steal your spouse's french fries;
From their plate in a diner

FEDERAL GENERIC DEFINITION
Any offense that has as an element the theft of french fries from another person's plate in a restaurant

Judge may not look at client's underlying criminal record in deciding

Immigration Consequences

Not A Match - Overbroad

STATE OFFENSE
It is a Class 3 Felony to:
Steal your spouse's french fries

FEDERAL GENERIC DEFINITION
Any offense that has as an element the theft of french fries from another person's plate in a restaurant

Judge may not look at client's underlying criminal record in deciding

No Immigration Consequences*

Divisible State Statute – Modified Categorical Approach

STATE OFFENSE
It is a Class 3 Felony, while in a diner:
a) to steal your spouse's french fries
-or-
a) to threaten to steal your spouse's french fries

Alternative A
Stealing french fries from your spouse in a diner

FEDERAL GENERIC DEFINITION
Any offense that has as an element the theft of french fries from another person's plate in a restaurant

Categorical Match
Consequences

Judge must be required to reach unanimity regarding whether client stole or threatened to steal to establish divisibility. Judge may look at client's underlying record in deciding under which alternative the client was convicted.

Not A Match

Alternative B
Threatening to steal french fries from your spouse in a diner

Not a Categorical Match
No Consequences*

*Realistic Probability Test