



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 20530

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**DHS/ICE Office of Chief Counsel - ATL  
180 Spring Street, Suite 332  
Atlanta, GA 30303**

**Name: VASSELL, WINSOME ELAINE**

**A 091-146-392**

**Date of this notice: 12/12/2014**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Holmes, David B.

Userteam: Docket

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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 20530

**VASSELL, WINSOME ELAINE  
A091-146-392  
IRWIN COUNTY DETENTION CENTER  
132 COTTON DRIVE  
OCILLA, GA 31774**

**DHS/ICE Office of Chief Counsel - ATL  
180 Spring Street, Suite 332  
Atlanta, GA 30303**

**Name: VASSELL, WINSOME ELAINE**

**A 091-146-392**

**Date of this notice: 12/12/2014**

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

A handwritten signature in cursive script that reads "Donna Carr".

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Holmes, David B.

Userteam:

Falls Church, Virginia 20530

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File: A091 146 392 – Atlanta, GA

Date: DEC 12 2014

In re: WINSOME ELAINE VASSELL a.k.a. Winsome E. Vassell a.k.a. Elaine Vassell

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Benjamin Osorio, Esquire

ON BEHALF OF DHS: Emily C. Reece  
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -  
Convicted of aggravated felony

Lodged: Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)] -  
Convicted of crime involving moral turpitude

Sec. 237(a)(2)(A)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(ii)] -  
Convicted of two or more crimes involving moral turpitude

APPLICATION: Termination, remand

The respondent, a native and citizen of Jamaica, appeals from an Immigration Judge's decision dated August 12, 2014, ordering her removed from the United States to Jamaica. In addition, while her appeal was pending, the respondent filed a motion to remand for consideration of new and previously unavailable evidence regarding her eligibility for relief from removal. The Department of Homeland Security (DHS) has moved for summary affirmance of the Immigration Judge's decision. The respondent's appeal will be sustained, and the record will be remanded for further proceedings regarding the respondent's removability and her eligibility for relief from removal.<sup>1</sup>

On appeal, we review the Immigration Judge's findings of fact for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

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<sup>1</sup> Because we are sustaining the respondent's appeal and remanding the record for further proceedings, it is not necessary for us to address specifically her motion to remand. The issues raised in the motion, however, should be addressed once the issue of removability is resolved.

The issue the respondent has raised in her Notice of Appeal and her supporting brief is an issue of law. Specifically, the respondent argues that her conviction for theft by taking under Ga. Code § 16-8-2 does not constitute an aggravated felony under 101(a)(43)(G) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(G), because the Georgia statute is overly broad and punishes offenses not included in the generic definition of theft. In particular, the respondent contends that the Georgia statute does not require a lack of consent of the victim but theft as defined in section 101(a)(43)(G) of the Act does include this element. *See Matter of Garcia-Madruga*, 24 I&N Dec. 436 (BIA 2008) (finding that a “theft offense” under section 101(a)(43)(G) of the Act requires the taking of, or exercise of control over, property without consent). The respondent therefore asserts that she is not removable as an aggravated felon and she asks us to terminate her proceedings. In the alternative, she asks for a remand for further consideration of the issue.

The respondent is correct that Ga. Code § 16-8-2 extends to offenses that fall outside the definition of “theft” for the purposes of section 101(a)(43)(G) of the Act. The Georgia statute states that a person commits the offense of theft by taking “when he unlawfully takes or, being in lawful possession thereof, unlawfully appropriates any property of another with the intention of depriving him of the property, regardless of the manner in which the property is taken or appropriated.” The Georgia courts have stated that the final phrase of the statute, “regardless of the manner in which the property is taken or appropriated,” is a catch-all phrase rendering the statute broad enough to encompass theft by conversion, theft by deception, or any of the “myriad and even yet-to-be-concocted schemes for depriving people of their property.” *Spray v. State*, 476 S.E.2d 878, 880 (Ga. App. 1986). In addition, the courts have sustained convictions under the statute in cases that involved fraud or deception rather than a lack of consent of the victim. *See, e.g., Ray v. State*, 299 S.E.2d 584 (Ga. App. 1983).

Further, the statute is not divisible, it is simply overbroad. *See Descamps v. United States*, 133 S.Ct. 2276 (2013). Accordingly, we cannot apply the modified categorical approach and look to the record of conviction to determine whether the respondent was convicted under that portion of the statute that does define a theft for the purposes of section 101(a)(43)(G) of the Act. *Id.* We instead must conclude that the respondent’s offense is not categorically a theft offense for the purposes of section 101(a)(43)(G) of the Act, and we must reverse the Immigration Judge’s finding to the contrary and the Immigration Judge’s finding that the respondent is removable as an aggravated felon.

The DHS, however, charged the respondent with removability on two other grounds and the Immigration Judge did not address these charges. We therefore remand the record for further proceedings regarding the respondent’s removability. Because we are remanding the record for further proceedings, we find it unnecessary to rule specifically on the respondent’s motion to remand. If the Immigration Judge finds the respondent removable, however, the Immigration Judge should address the respondent’s eligibility for relief from removal and the evidence included in the motion to remand.

A091 146 392

ORDER: The respondent's appeal is sustained, and the record is remanded to the Immigration Judge for further proceedings consistent with this order.



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FOR THE BOARD

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IMMIGRATION COURT  
180 SPRING ST. SW, SUITE 241  
ATLANTA, GA 30303

In the Matter of

Case No.: A091-146-392

VASSELL, WINSOME ELAINE  
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 8/12/14.  
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

- [ X ] The respondent was ordered removed from the United States to Jamaica  
or in the alternative to .  
[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to .  
[ ] Respondent's application for voluntary departure was granted until upon posting a bond in the amount of \$ \_\_\_\_\_ with an alternate order of removal to .

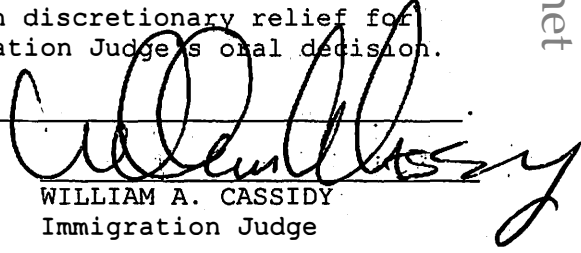
Respondent's application for:

- [ ] Asylum was ( ) granted ( ) denied ( ) withdrawn.  
[ ] Withholding of removal was ( ) granted ( ) denied ( ) withdrawn.  
[ ] A Waiver under Section \_\_\_\_\_ was ( ) granted ( ) denied ( ) withdrawn.  
[ ] Cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn.

Respondent's application for:

- [ ] Cancellation under section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.  
[ ] Cancellation under section 240A(b)(2) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.  
[ ] Adjustment of Status under Section \_\_\_\_\_ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.  
[ ] Respondent's application for ( ) withholding of removal ( ) deferral of removal under Article 1 of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.  
[ ] Respondent's status was rescinded under section 246.  
[ ] Respondent is admitted to the United States as a \_\_\_\_\_ until \_\_\_\_\_.  
[ ] As a condition of admission, respondent is to post a \$ \_\_\_\_\_ bond.  
[ ] Respondent knowingly filed a frivolous asylum application after proper notice.  
[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.  
[ ] Proceedings were terminated.  
[ ] Other: \_\_\_\_\_

Date: Aug 12, 2014

  
WILLIAM A. CASSIDY  
Immigration Judge

Appeal: Waived/Reserved Appeal Due By:

9/11/14