



**U.S. Department of Justice**

**Executive Office for Immigration Review**

*Board of Immigration Appeals  
Office of the Clerk*

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*5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041*

**Lewis, Steffanie J., Esq.  
The International Business Law Firm  
1915 Eye Street, N.W., Suite 500  
Washington, DC 20006**

**DHS/ICE Office of Chief Counsel - WAS  
500 12th St., SW, Mail Stop 5902  
Washington, DC 20536**

**Name: OMARGHARIB, SAYED GAD**

**A 093-002-513**

**Date of this notice: 3/18/2013**

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:  
Neal, David L

User team: Docket

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Falls Church, Virginia 22041

**OMARGHARIB, SAYED GAD  
A093-002-513  
RAPPAHANNOCK FACILITY  
1745 JEFFERSON DAVIS HIGHWAY  
STAFFORD, VA 22554**

**DHS/ICE Office of Chief Counsel - WAS  
500 12th St., SW, Mail Stop 5902  
Washington, DC 20536**

**Name: OMARGHARIB, SAYED GAD**

**A 093-002-513**

**Date of this notice: 3/18/2013**

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,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Neal, David L

Doc#  
User team: 10-0101

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**U.S. Department of Justice**  
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

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File: A093 002 513 – Arlington, VA

Date: MAR 18 2013

In re: SAYED GAD OMARGHARIB a.k.a. Sayed Ghad Omargharib

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Steffanie J. Lewis, Esquire

By Direction of the Board,

This is a pending appeal for which the record of proceedings has not been received at the Board from the Immigration Court. Multiple attempts to have the record located and forwarded to the Board have been unsuccessful. The Board cannot proceed without the record of proceedings. Accordingly, the matter is remanded to the Immigration Court for recovery of the record.



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FOR THE BOARD

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In the Matter of Sayed Gad OMARGHARIB  
A# 093 – 002 – 513

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
United States Immigration Court  
1901 South Bell Street, Suite 200  
Arlington, VA 22202**

**IN THE MATTER OF:**

OMARGHARIB, Sayed Ghad

Respondent

**IN REMOVAL PROCEEDINGS**

**File No. A 093 – 002 – 513**

**CHARGE:**

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (“INA” or “the Act”), as amended, as an alien convicted of an aggravated felony, as defined in INA § 101(a)(43)(G), a theft offense for which the term of imprisonment at least one year.

**APPLICATION:**

Motion to terminate.

**APPEARANCES**

**FOR THE RESPONDENT:**

Steffanie J. Lewis, Esq.  
International Business Law Firm, P.C.  
1915 I Street, NW, Suite 500  
Washington, DC 20006

**FOR THE DHS:**

Marc Harrold, Esq.  
Assistant Chief Counsel  
Department of Homeland Security  
1901 South Bell Street, Suite 200  
Arlington, VA 22202

**DECISION AND ORDER**

**I. BACKGROUND**

The respondent is a native and citizen of Egypt. He entered the United States without being admitted or paroled on or about April 20, 1985. On August 1, 1990, the respondent’s status was adjusted to that of a temporary resident and on December 1, 1990 he became a lawful permanent resident in accordance with INA § 210(a). On July 13, 2011, the respondent was convicted of grand larceny in violation of Virginia Code § 18.2-95 and sentenced to twelve months imprisonment for that offense.

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On March 30, 2012, the Department of Homeland Security (“DHS”) filed a Notice to Appear (“NTA”) charging the respondent with removability under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (“INA” or “the Act”) as an alien convicted of an aggravated felony theft offense as described in INA § 101(a)(43)(G). The respondent admitted the allegations contained in the NTA, including the alleged conviction and sentence, but denied the charge of removability. After considering arguments from the parties and the evidence in the record, on June 5, 2012, the Immigration Court sustained the charge of the removability against the respondent and on July 17, 2012, denied the respondent’s motion for reconsideration.

The respondent requested and was granted continuances in order to prepare applications for relief from removal. However no application for relief was ever filed. Accordingly, on August 21, 2012, the Immigration Court entered an order of removal. The respondent has appealed that decision to the Board of Immigration Appeals (“Board”). On December 12, 2012, the Board remanded the proceedings to the Immigration Court for a more complete explanation for its decision. Accordingly, the Immigration Court now sets forth in writing the rationale for its decision.

## II. ANALYSIS

In assessing whether the respondent has been convicted of an aggravated felony, the Immigration Court first employs the structured categorical approach announced in Taylor v. United States, 495 U.S. 575 (1990). If that does not resolve the inquiry, the Immigration Court next uses the modified categorical analysis derived from Shepard v. United States, 544 U.S. 13 (2005). See Prudencio v. Holder, 669 F.3d 472 (4<sup>th</sup> Cir. 2012).

The record demonstrates and the respondent admits that he was convicted of grand larceny in violation of Virginia Code § 18.2-96 and sentenced to twelve months for that offense. That statute will describe a categorical theft offense under INA § 101(a)(43)(G) only if all offenses punishable under that statute necessarily involve 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 Garcia-Madruga, 24 I&N Dec. 436, 440-41 (BIA 2008). A conviction for larceny under Virginia law requires “wrongful or fraudulent taking of personal goods of some intrinsic value, belonging to another, without his assent, and with the intention to deprive the owner thereof permanently.” Foster v. Commonwealth, 606 S.E. 2d 518, 519 (Va. Ct. App. 2004). Because the statute of the respondent’s conviction is sufficiently broad to encompass fraudulent takings in addition to theft, the Immigration Court finds that the offense is not categorically an aggravated felony theft offense.

Under the modified categorical approach, however, the respondent’s conviction is for an aggravated felony theft offense. The record of conviction demonstrates that the respondent was convicted simply for taking pool cues belonging to another and even he does not maintain that he

In the Matter of Sayed Gad OMARGHARIB  
A# 093 – 002 – 513

in anyway induced the owner of these pool cues to surrender them. As a result, the Immigration Court finds that the respondent's conviction for grand larceny was for a theft offense, within the meaning of INA § 101(a)(43)(G), and his twelve month sentence for that offense renders him an aggravated felon. Accordingly, the charge against the respondent must be sustained and his motion to terminate must be denied.

Based on the foregoing, the Immigration Court enters the following order:

**ORDER**

**It Is Ordered that:**

The respondent's motion to terminate be **DENIED**.

**It Is Further Ordered that:**

The respondent be **REMOVED** to Egypt.

December 26, 2012  
Date

\_\_\_\_\_  
Rodger C. Harris  
United States Immigration Judge

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