

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 03 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

YOON SOK HONG,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 05-72427

Agency No. A039-763-076

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted October 16, 2006**
Pasadena, California

Before: HUG, PREGERSON, and CLIFTON, Circuit Judges.

Yoon Suk Hong petitions for review of the IJ's finding, affirmed by the BIA, that his conviction for grand theft was an aggravated felony as defined in 8 U.S.C. § 1101(a)(43)(G) that rendered him removable. We deny the petition.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We review the question of whether a state statutory crime constitutes an aggravated felony de novo. *See Ye v. INS*, 214 F.3d 1128, 1131 (9th Cir. 2000). A conviction under California Penal Code § 487(a) is not a categorical theft offense as defined in 8 U.S.C. § 1101(a)(43)(G), because a person can be convicted for the theft of services under California Penal Code § 487(a), while the generic definition of a theft offense does not include the theft of services. *Cf. United States v. Corona-Sanchez*, 291 F.3d 1201, 1208 (9th Cir. 2002) (en banc), *superseded on other grounds by* U.S.S.G. § 2L1.2 cmt. n.4 (2002). While a person also can be convicted under California Penal Code § 487(a) under an “aiding and abetting” theory of liability, *see People v. Guzman*, 53 Cal. Rptr. 2d 67, 69 (Ct. App. 1996), the Supreme Court determined that the term “theft offense” in 8 U.S.C. § 1101(a)(43)(G) includes the crime of “aiding and abetting” a theft offense. *See Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 185 (2007).

Under a modified categorical analysis, the record of conviction establishes that Hong’s conviction falls within the generic definition of a “theft offense,” even though California Penal Code § 487(a) is overly inclusive. Hong admitted in his plea that he stole money, not services. Thus, Hong’s record of conviction does establish that his conviction falls within the generic definition of a “theft offense.”

PETITION FOR REVIEW DENIED.

