

Old theft charge could lead to longtime Athenian's deportation

Hesham Gad was just 3 when his parents immigrated from Egypt to the United States and settled in Athens.

Thirty years later, "Sham," as he's known, has realized the American dream — he earned an MBA at the University of Georgia's Terry College of Business, founded Gad Capital Management on South Milledge Avenue, owns and manages properties in Five Points, and has been married for nearly three years.

He's also been involved in community affairs, like serving on the board of the Athens Justice Project, and a few months ago Mayor Nancy Denson selected Gad to co-chair a committee to ensure there are fireworks in Athens next Fourth of July after the annual Star-Spangled Classic fizzled in 2011 from a lack of funding.

But there's a chance Gad could be taken from the only country he knows and the community he loves.

He may face deportation to Egypt because of a 2008 theft conviction, even though he completed two years of probation as a first offender, made full restitution of the stolen money, and former Superior Court Judge Steve Jones signed an order that exonerated him.

The U.S. Immigration and Customs Enforcement doesn't recognize that exoneration, however, and because of his 2008 guilty plea, sees him as an "aggravated felon" and subject to mandatory deportation, according to Karen Weinstock, an Atlanta immigration attorney who represents Gad.

When Gad pleaded guilty, neither his attorney nor the judge explained to him that a conviction could lead to deportation, according to Weinstock.

"Judges basically tell people that if they enter a guilty plea it could affect their immigration status, but I've never heard a judge ask someone if they understood that if they signed a guilty plea they could be deported," she said. "If the question was put that way, a lot of people wouldn't have signed those pleas."

Even Gad's trial attorney, Edward Tolley, signed an affidavit in which he admitted that if he'd been aware that Gad faced deportation, he would have encouraged his client to take his chance at trial.

"In view of the fact that I feel that I failed to fully advise Mr. Gad and he relied on my advice to his detriment, that his guilty plea was not knowingly and voluntarily entered," Tolley said in his affidavit.

Gad was charged with felony theft by taking for stealing more than \$4,000 from Earth Fare — a natural foods store in Five Points — when he was the store's marketing coordinator in 2004.

In an August 2010 letter addressed to "officers of the court," Gad blamed his "stupid and selfish actions during the course of several months that led to this conviction."

He spoke of his love for Athens, and a desire to remain a contributing member of the community.

"I think you will agree that, ironically, society has benefited to a certain extent from those individuals who are given a second shot at redemption," Gad wrote.

"In no way is this an excuse to justify my past actions," he said. "I will always regret the dumb, selfish, and irresponsible decision I have made.

"But if I can take that mistake, learn from it, and use the lessons learned to become an even better citizen and even bigger benefactor to my community, then I truly hope that stands for something."

Gad's predicament stems from the Illegal Alien and Immigrant Responsibility Act of 1996, which greatly changed immigration laws and subjects immigrants who have legally lived in the U.S. for many years to deportation even for nonviolent crimes.

Gad's new attorneys last year filed a motion that asked Jones to allow Gad to withdraw his guilty plea, but a prosecutor objected because the term of the court in which Gad pleaded guilty expired and his only recourse was in civil court.

The attorneys filed a civil petition Tuesday that asks a judge to decide the matter.

A hearing is scheduled for Feb. 15, and arguments will be heard by Superior Court Judge H. Patrick Haggard, who inherited the case when Jones was appointed to a federal judgeship.

Haggard will have to decide whether to set aside Gad's conviction, according to Abbi Taylor, a Decatur attorney who is representing Gad with attorney Phillip Griffeth of Athens.

"I go all over the country doing these types of cases, but this is one that has really sat heavily on my heart," Taylor said. "Sham's the kind of person who's living the American dream, and if he made a mistake and did everything he could to make up for it, that really shows the quality of his character."

Gad would struggle in Egypt, which has experienced deadly sectarian violence and where he knows no one.

"It would be a dangerous situation for him because he would be a foreigner to real Egyptians," she said. "He doesn't know the language or culture — he speaks Southern-accented English, and because he is Christian the religious factor would be a very real danger."

If Haggard agrees to set aside the conviction, Gad still won't be in the clear, according to Taylor, who said that the case would be reopened and the district attorney's office could opt for another prosecution.

"Setting aside Sham's plea will put everything back to square one, but at least that would create the beginning of the end for him," Taylor said.