

## 10-694 JUDULANG V. HOLDER

DECISION BELOW: 249 Fed. Appx 499

LOWER COURT CASE NUMBER: 06-70986

### QUESTION PRESENTED:

For more than 25 years, the Board of Immigration Appeals (BIA) held that a legal permanent resident (LPR) who is deportable due to a criminal conviction could seek a discretionary waiver of removal under Section 212(c) of the Immigration and Nationality Act, 8 U.S.C. §1182(c), provided that the conviction also would have constituted a waivable basis for exclusion. In 2005, the BIA abruptly changed course, adding a requirement that the LPR be deportable under a statutory provision that used "similar language" to an exclusion provision. Deportable LPRs who departed and reentered the United States after their conviction, however, may seek Section 212(c) relief under a longstanding "*nunc pro tunc*" procedure that does not turn on similar language between deportation and exclusion provisions. Thus, under the BIA's current view, an LPR who pled guilty to an offense that renders him both deportable and excludable, but under provisions that use dissimilar phrasing, will be eligible for Section 212(c) relief from deportation if he departed and reentered the United States after his conviction, but ineligible if he did not depart. The circuits are split three ways on the lawfulness of the BIA's new interpretation.

The question presented is:

Whether a lawful permanent resident who was convicted by guilty plea of an offense that renders him deportable and excludable under differently phrased statutory subsections, but who did not depart and reenter the United States between his conviction and the commencement of removal proceedings, is categorically foreclosed from seeking discretionary relief from removal under former Section 212(c) of the INA.

CERT. GRANTED 4/18/2011