



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: ZHELEZNYAK, GENNADIY

A 071-100-953

Date of this notice: 11/1/2017

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

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Kendall Clark, Molly

Userteam: Docket

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Falls Church, Virginia 22041

File: A071 100 953 – New York, NY

Date: **NOV – 1 2017**

In re: Gennadiy ZHELEZNYAK a.k.a. Gennadiy Zhelezhyak a.k.a. Gennaiy Zheleznyar

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Darryl L. Wynn, Esquire

APPLICATION: Reopening

The Board entered the final administrative decision on December 30, 1998, when we dismissed the respondent's appeal of the Immigration Judge's decision ordering the respondent removed to Israel in connection with his aggravated felony convictions. The respondent now seeks reopening in connection with the United States Citizenship and Immigration Services' ("USCIS") approval of a family-based visa petition filed on his behalf. He also seeks to apply for an inadmissibility waiver under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h). The Department of Homeland Security has not responded to the motion, which will be granted. 8 C.F.R. § 1003.2(g)(3).

An alien who adjusts status to a lawful permanent resident after entering the United States – in contrast to an alien admitted into the United States for permanent residence – is eligible to seek section 212(h) relief, even when he has been convicted of an aggravated felony. See *Husic v. Holder*, 776 F.3d 59 (2d. Cir. 2015); *Matter of J-H-J-*, 26 I&N Dec. 563 (BIA 2015). The record indicates that the respondent adjusted status to that of a lawful permanent resident after his admission into the United States on a nonimmigrant visa (IJ at 1). Consequently, the respondent appears eligible to apply for a discretionary waiver of inadmissibility under section 212(h) of the Act, in conjunction with his adjustment of status application.

On remand, the Immigration Judge will have the opportunity to conduct further fact-finding, as necessary, to evaluate the impact of *Husic v. Holder*, and to determine whether the respondent is eligible for and deserving of a section 212(h) waiver. The Board expresses no views on the ultimate outcome of these reopened proceedings, other than to note that the burden of establishing eligibility for relief rests with the respondent.

ORDER: The motion is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this order.



FOR THE BOARD