



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**Darnell- Allen, Barbara J.  
Law Offices of Barbara J. Darnell  
3255 Wilshire Bl., Suite #1701  
Los Angeles, CA 90010**

**DHS/ICE Office of Chief Counsel - LOS  
606 S. Olive Street, 8th Floor  
Los Angeles, CA 90014**

**Name: AJIBOYE, MICHAEL ADE**

**A 023-708-185**

**Date of this notice: 1/8/2018**

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:  
Kendall Clark, Molly

3/1/2018  
User team: Docket

For more unpublished BIA decisions, visit  
[www.irac.net/unpublished/index](http://www.irac.net/unpublished/index)

*ng*

Falls Church, Virginia 22041

---

File: A023 708 185 – Los Angeles, CA

Date:

**JAN – 8 2018**

In re: Michael Ade AJIBOYE

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Barbara J. Darnell-Allen, Esquire

APPLICATION: Reopening

The Board entered the final administrative decision in this case on April 30, 2014, when we dismissed the respondent's appeal of the Immigration Judge's decision ordering the respondent removed to Nigeria in connection with his criminal convictions. The respondent now seeks reopening in connection with the United States Citizenship and Immigration Services' ("USCIS") approval of a marriage-based visa petition filed on his behalf by his United States citizen wife. 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 (DHS) has not responded to the motion, which will be granted. 8 C.F.R. § 1003.2(g)(3).

Under present law, 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, notwithstanding an aggravated felony conviction. *See Negrete-Ramirez v. Holder*, 741 F.3d 1047 (9th Cir. 2014); *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 4-6; Exh. 1). Consequently, the respondent appears eligible to apply for a discretionary waiver of inadmissibility under section 212(h) of the Act. Given the change in law regarding the respondent's eligibility for relief from removal, and the lack of DHS opposition to reopening, we will grant the respondent's motion to reopen sua sponte.

On remand, the Immigration Judge will have the opportunity to conduct further fact-finding, as necessary, and to determine the respondent's eligibility for a section 212(h) waiver in the first instance, as well as to weight the discretionary factors. The Board expresses no views on the ultimate outcome of these reopened proceedings, other than to note that the respondent bears the burden of establishing that he is eligible for and deserving of relief.

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