

## CHART: Eligibility for Waiver in Removal Proceedings Under the Former INA § 212(c), Pursuant to *Judulang v. Holder*<sup>1</sup>

Type of Charge; Date of Conviction	What Conviction/s Can Be Waived
Deportability Charge Based on pre-4.26.96 Guilty Plea	On remand it is likely that § 212(c) will be held available to waive any deportation charge based on a conviction that also would have formed a basis for “exclusion” (inadmissibility), including, e.g., conviction of an aggravated felony or firearms offense that also causes inadmissibility under the moral turpitude ground. Advocates can argue that convictions that cause deportability but not inadmissibility – e.g., a conviction for simple possession of a firearm – also are waivable under the reasoning of <i>Judulang</i> . See Vargas et al, “Practice Advisory” <sup>2</sup>
Deportability Charge Based on Guilty Plea Between 4.24.96 and 4.1.97	On remand it is likely that the above rule will apply, <i>except</i> that § 212(c) may be held not available to waive deportation grounds specified in the 1996 AEDPA. The specified grounds include: conviction of an aggravated felony, controlled substance offense, firearms offense, or “miscellaneous” deportation ground offense (sabotage, treason, etc.); conviction of two crimes involving moral turpitude, <i>both</i> of which carry a potential sentence of a year or more; and deportability for drug abuse/addiction.
Inadmissibility Charge Based on Guilty Plea Before 4.1.97	The <i>Judulang</i> decision should not change the fact that § 212(c) is available to waive any inadmissibility ground based on a conviction from before 4.1.97. (AEDPA’s limits on waiver of “specified grounds” referred to deportation grounds only.) <sup>3</sup>
Exception: Served Five Years for One or More Agg. Felonies	Section 212(c) is not available where one or more aggravated felony convictions, received on or after November 29, 1990, result in actual time served of five years or more. <sup>4</sup>
Remaining Questions	What specific rule will be set out upon remand? What will happen to persons with a final order, or already deported/removed, who should have been found eligible? Under what circumstances will conviction by jury be subject to § 212(c)? See Advisory. <sup>2</sup>

<sup>1</sup> *Judulang v. Holder*, 132 S.Ct. 476 (Dec. 12, 2011). This Chart was written by Kathy Brady of ILRC, with input from Manny Vargas and Zach Nightingale, as well as the below Practice Advisory.

<sup>2</sup> See Vargas, Morawetz, Realmuto, Kesselbrenner, and Werlin, “Practice Advisory: Implications of *Judulang v. Holder* for LPRs seeking § 212(c) Relief and for Other Individuals Challenging Arbitrary Agency Policies” (Dec. 16, 2011) at [www.immigrantdefenseproject.org](http://www.immigrantdefenseproject.org).

<sup>3</sup> See, e.g., discussion in *Matter of Azurin*, 23 I&N Dec. 695 (BIA 2005) and in Brady et al., *Defending Immigrants in the Ninth Circuit* ([www.ilrc.org](http://www.ilrc.org)), § 11.1(B), (C).

<sup>4</sup> See, e.g., discussion in *Toia v. Fasano*, 334 F.3d 917 (9<sup>th</sup> Cir. 2003)