



# 212(h) Criminal Waivers For Violent and Dangerous Crimes

Changes resulting from  
The Matter of Jean



# 12/26/02 INS Interim Final Rule

Codifies AG's decision as stated in the Matter of Jean to set up a two-part test for aliens to obtain a 212(h) waiver for 212(a)(2) inadmissibility resulting from “violent or dangerous crimes”



# Matter of Jean



The Matter of Jean involved a refugee adjustment case where the alien had been convicted of manslaughter. The INS denied the waiver request, and the IJ agreed, but the BIA remanded the case back to the IJ, citing extreme hardship to the applicant's family.

# Matter of Jean

The AG overturned the BIA, stating that the AG's discretion to grant 212(h) waivers for violent or dangerous crimes should not be used except when there are “extraordinary circumstances.”



# 212(h) waivers for adjustment applicants

This means that adjustment applicants who wish to obtain a 212(h) waiver for a violent or dangerous crime now face a two-part test:



# 212(h) waivers for adjustment applicants

First: Like before, applicants must be eligible for the waiver—either via the “Rehabilitation wavier” at INA 212(h)(1)(A), or via the “Family Member” (Extreme Hardship) waiver at INA 212(h)(1)(B).



# 212(h) waivers for adjustment applicants

Second:

The applicant must demonstrate that the case warrants the AG's use of discretion because there are "extraordinary circumstances."



# 212(h) waivers for adjustment applicants



The decision notes that, in general, aliens convicted of aggravated felonies would not warrant this discretion.

# Extraordinary Circumstances

The AG noted two types of extraordinary circumstances:

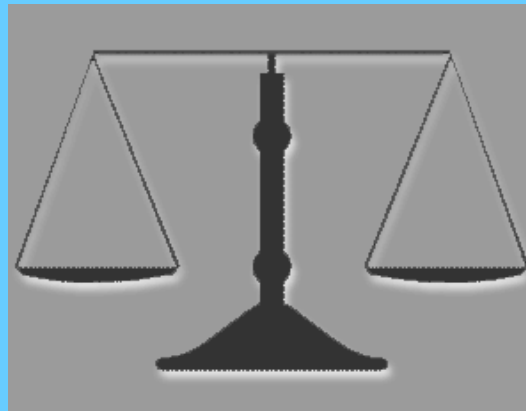


1. Cases that involve national security or foreign policy considerations, or
2. Cases in which an alien clearly demonstrates that the denial of the application for adjustment of status would result in exceptional and extremely unusual hardship.



# Gravity v. Equity

The AG's decision in the Matter of Jean went one step further: Depending on the gravity of the underlying offense, the equities presented in such extraordinary circumstances may still be insufficient to warrant the use of discretion.



# Summary

- Matter of Jean & 12/26/02 Interim Rule
- 212(h) waivers (Form I-601)
- Violent or Dangerous Crimes
- First: Extreme Hardship
- Second: Extraordinary Circumstances
- Finally: Gravity v. Equity
- CD ROM (Rule and decision)
- Memo to come...

# Questions?

