CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

# BOARD OF IMMIGRATION APPEALS LIMITS SCOPE OF ENTRY FRAUD WAIVER UNDER INA 237(A)(1)(H)

*Posted on March 2, 2026 by Cyrus Mehta & Kaitlyn Box**

**By Cyrus D. Mehta and Kaitlyn Box***

On February 26, 2026, in *Matter of Fortjoe*, the BIA held that "'admission' in section 237(a)(1)(H) of the INA, 8 U.S.C. § 1227(a)(1)(H), refers only to an alien's lawful entry into the United States after inspection and authorization by an immigration officer. Mr. Fortjoe was a citizen of Ghana who was admitted to the United States as a nonimmigrant in 1995, and later entered into a fraudulent marriage with a U.S. citizen. In a 2007 visa interview, he failed to disclose that he had fathered two children by another woman during his marriage to the U.S. citizen spouse. In 2012 he applied for naturalization and disclosed the two children born outside of his marriage. USCIS denied his naturalization application and DHS initiated removal proceedings pursuant to INA 237(a)(1)(A), which renders a noncitizen "who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time" removable. Mr. Fortjoe sought a waiver of inadmissibility pursuant to INA 237(a)(1)(H), which is available to noncitizens who are in removal proceedings, are the spouse, parent, or child of a U.S. citizen or LPR, and are admissible to the U.S. aside from the fraud or misrepresentation, but the Immigration Judge denied the waiver on discretionary grounds.

In 2015, in *Matter of Agour*, the BIA had previously held that "adjustment of status constitutes an 'admission' for purposes of determining an alien's eligibility to apply for a waiver" under INA 237(a)(1)(H). In *Matter of Fortjoe*, the BIA overruled *Matter of Agour*. The BIA reasoned that "the plain and natural meaning of the language of section 237(a)(1)(H) limits the waiver to fraud or misrepresentation at the time of an alien's lawful entry into the United States after inspection and authorization by an immigration officer." The BIA also

examined the statutory history of this provision, finding that Congress' "change in language from 'entry' to 'admission' appears to have been merely a conforming amendment, rather than one intended to have a substantive effect", and that Congress did not make a corresponding change to INA 237(a)(1)(A), which renders noncitizens who were inadmissible "at the time of entry or adjustment of status" removable.

In overruling *Matter of Agour*, the BIA relied on *Loper Bright v. Raimondo*, analyzed in prior blogs, in which the Supreme Court abolished the long-standing Chevron doctrine, under which, courts were required to defer to the government agency's interpretation of an ambiguous statute. *Loper Bright*, according to the BIA, holds that "reexamination of a precedent's reasoning may be warranted, notwithstanding the doctrine of *stare decisis*". The BIA's decision in *Fortjoe* illustrates that *Loper Bright*, which may serve as a tool for challenging Trump administration immigration policies, can also be relied upon by the agency to overturn its own precedent that is favorable to noncitizens. However, the BIA's decision is itself an agency interpretation that is subject to being overturned under *Loper Bright*, as was recently illustrated when a federal court in California overruled the BIA's decision in *Matter of Yajure Hurtado*, which had held that a noncitizen who entered the US without inspection is not eligible for bond under INA 235(b)(2)(A). It may not be appropriate for the BIA to rely on *Loper Bright*, only a federal court ought to be able to rely on *Loper Bright* and not pay deference to a BIA decision.

If the BIA decision in *Matter of Agour* does not get reversed in the Sixth Circuit Court of Appeals, it would greatly limit relief under INA 237(a)(1)(H) to those who are inspected and admitted as lawful permanent residents after obtaining an immigrant visa at a US consulate. It would not apply to people who applied for adjustment of status and committed fraud or misrepresentation during the process. People applying for naturalization should also be aware that if it is found that they were not appropriately adjusted to lawful permanent resident status in the US as a result of fraud or misrepresentation during adjustment of status, would not be able to avail of the waiver under INA 237(a)(1)(H) if they are denied naturalization and placed in removal proceedings. Our prior blog contemplated scenarios in which an applicant can be denied naturalization, which could also include cases of innocent misrepresentation while adjusting status in the US. An example could include one who was mistakenly granted adjustment of status by the government in a preference category where the

priority date may not have been current.

The BIA made clear that its ruling in *Matter of Fortjoe* will apply prospectively and not retroactively. Thus, people who have received waivers prior to this decision based on fraud or misrepresentation will not be adversely impacted by this decision.

*Kaitlyn Box is a Partner at Cyrus D. Mehta & Partners PLLC.