

11258

COUNSEL

Andres Z. Bustamante, Los Angeles, California, attorney for the petitioner.

Lisa M. Arnold, Attorney, U.S. Department of Justice, Civil Division, Washington, D.C., attorney for the respondent.

OPINION

PREGERSON, Circuit Judge:

We must determine in this case whether we have jurisdiction to review the petition of an alien opposing deportation on the ground that he is not removable for a criminal conviction because it occurred prior to the granting of his visa applica-

tion. Under 8 U.S.C. § 1252(a)(2)(C) we lack jurisdiction to

have received his visa without a waiver under INA§ 212, and did not contest that the appropriate waiver box,§ 212(h), was not checked.

On December 11, 1998 the IJ concluded that Zavaleta was

pro tunc motion for § 212(h) relief. Zavaleta timely appealed the BIA's determination.

II.

The government contends that this court lacks jurisdiction to hear Zavaleta's appeal under 8 U.S.C. § 1252(a)(2)(C). This section provides in relevant part that "no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in section 1182(a)(2) [INA § 212(a)(2)] or 1227(a)(2)(A)(iii), (B), (C), (D) [INA § 237(a)(2)(A)(iii), (B), (C), or (D)]. " 8 U.S.C. § 1252 (a)(2)(C).

Although § 1252(a)(2)(C) broadly strips federal appellate courts of jurisdiction to review final orders of removal of criminal aliens, we have determined that appellate courts
213tion prD /tiou m2cs ol aliens, 0.e5 r a petiou m r `43 f removal aga095ed a

Zavaleta argues on appeal that the government waived the

§ 212(a)(2) and § 237(a)(2)(A)(iii). **4** We can quickly dispose of the § 237 criminal alien provision argument. INA § 237(a)(2)(A)(iii) authorizes removal only for criminal felony convictions that occurred after admission. Zavaleta's stalking conviction occurred before any lawful admission.

Whether Zavaleta is removable under § 212(a)(2) is a more complicated inquiry. INA § 212(a)(2)(A)(i)(I) defines classes of aliens who are ineligible for visas or admission and

