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The immigration judge ("IJ") ordered Finau's removal, which Finau appealed to the Board of Immigration Appeals ("BIA"), claiming eligibility for voluntary departure and for a waiver under 8 U.S.C. § 1182(h).**1**

again, which affirmed the IJ and rejected the Equal Protection claim. Finau then appealed to this court.²

STANDARD OF REVIEW

We review the constitutionality of a statute de novo. Confederated Tribes of Siletz Indians v. United States, 110 F.3d 688, 693 (9th Cir. 1997).

DISCUSSION

I. Section 1182(h)

Section 1182(h) provides discretionary relief for aliens seeking to enter the United States who would ordinarily be statutorily excluded for a reason such as criminal history. Because an adjustment of status to that of lawful permanent resident is viewed as an "entry" into the United States, this relief also extends to aliens who are physically present in the country (such as aliens with visas and illegal aliens) who are seeking to become lawful permanent residents. See 8 U.S.C. §§ 1255; 1182(h)(2).

Discretionary relief is available in two circumstances.

