

BIA finds Admission to U.S. Requires only “Procedural Regularity”

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The Board of Immigration Appeals (BIA) held an immigrant has been "admitted" to the United States if she can prove "procedural regularity" in her entry. *See* Matter of Quilantan, 25 I&N Dec. 285 (July 28, 2010).

The immigrant was a citizen of Mexico. In January 2001, she was a passenger in an automobile driven by her friend, a U.S. citizen. When the vehicle reached a border crossing, an inspection officer asked the driver whether he was a U.S. citizen. The driver said yes and was waved through the port of entry. The Mexican national did not have a valid visa or border crossing card. However, the officer never asked her any questions or for any identification. Thus, she was not untruthful with the inspecting officer.

Five years later, the Mexican national married a U.S. citizen, who filed and received an approved I-130 petition. However, on the basis of her I-485 - Adjustment of Status application, which did not have any physical evidence of entry, she was served with a Notice to Appear before an Immigration Judge (IJ) for removal. At trial, the IJ found the Mexican national had not been "admitted" even though there was "procedural regularity." Thus, she was ineligible for Adjustment of Status.

On appeal to the BIA, the Mexican national asserted she was admitted by "physically presenting herself for questioning (which) constitutes an inspection, even if she volunteered no information and was not questioned by immigration."

The BIA explored the legislative history of section 245(a) of the Immigration and Nationality Act, amended 1960, which states in pertinent part, "The status of an alien other than an alien crewman, who was admitted or paroled into the United States may be adjusted by the Attorney General . . ." Furthermore, it reviewed whether section 101(a)(13)(A) of the IIRIRA, enacted in 1996, impacted the decision. The BIA said Congress did not intend to change the BIA's long-standing interpretation of admission as it applies to "inspected and admitted" for adjustment of status.

Based upon this analysis, one is not required to be in compliance with "substantive legal requirements", only with "procedural regularity." The BIA concluded the Mexican national made a lawful entry into the U.S., was admitted to the U.S., and is eligible for adjustment of status to receive her permanent residence.