Matter of Quilantan

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The *Quilantan* Landscape

- Case Law and Statutes
- New guidance from USCIS
- Preparation and Filing Tips
- The Interview
- Motions to Reopen

INA Section 245 (a)

The status of an alien who was **inspected and admitted** or paroled into the United States … may be adjusted by the Attorney General, in his discretion … to that of an alien lawfully admitted for permanent residence …

Matter of Areguillin
April 7, 1980

- Filed for adjustment of status as spouse of U.S. citizen;
- Last entry: passenger in car with 5 other people;
- Inspector solely questioned driver, then waved car through;
- Inspector never questioned Areguillin
- **Only evidence of border crossing was Areguillin's testimony**

Matter of Areguillin

"An alien who physically presents herself for questioning and makes no knowing false claim to citizenship is "inspected" even though she volunteers no information and is asked no questions by the immigration authorities, and has satisfied the "inspection and admission" requirement of section 245 of the Immigration and Nationality Act."

Matter of Areguillin (cont.)

"Admission" occurs when the inspecting officer communicates to the applicant that he has determined that the applicant is not inadmissible. That communication has taken place when the inspector permits the applicant to pass through the port of entry.

Matter of Areguillin (cont.)

The **respondent bears the burden** of proving that she in fact presented herself for inspection as an element of establishing eligibility for adjustment of status.

Case remanded to IJ to determine if respondent met her burden.

Matter of Areguillin (cont.)

- No finding made by IJ as to credibility and sufficiency of evidence supporting Areguillin's claim

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)

Enacted Immigration and Nationality Act Section 101(a)(13)(A):

The terms "admission" and "admitted" mean, wi
alien, the **lawful entry** of the alien into the Un
inspection and authorization by an immigration offi

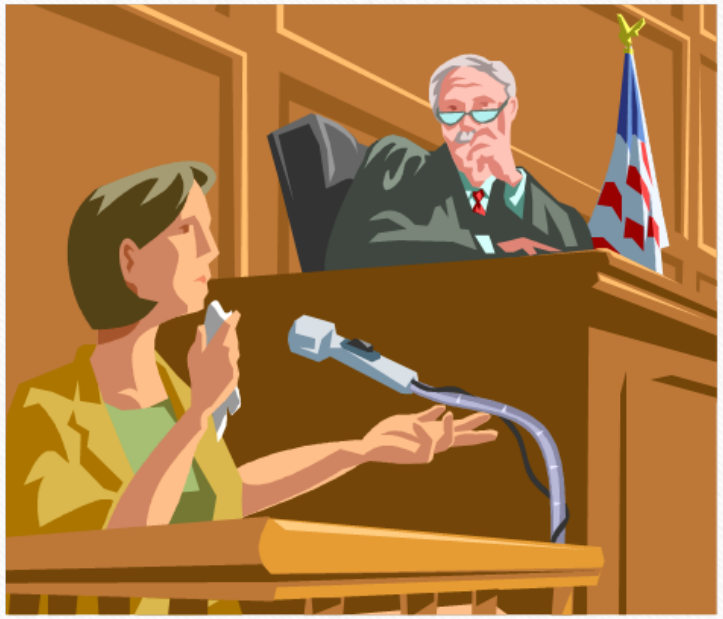
Matter of Quilantan
July 28, 2010

- Q first entered the US in 1993 on a valid border crossing card;
- She remained in US until 2000, when returned to Mexico;
- She lost her border card, applied for a tourist visa and was denied;
- She re-entered US on January 10, 2001 as a passenger in a car;
- Inspector asked driver if he was a U.S. citizen;
- Inspector never questioned Quilantan.

Matter of Quilantan (cont.)

- In 2006, Q applies to adjust status through USC spouse.

Her testimony is the only evidence submitted.



The Wave-In

- Issue: After IIRIRA amended definition of "admission," is *Areguillin* still valid?
- IJ: No. Q inadmissible because she was not admitted and she did not have a valid entry document.
- BIA: Yes. Quilantan was inspected and admitted, and therefore is eligible for AOS under INA 245(a).

Matter of Quilantan (cont)

"Procedural regularity" required to prove "admission" under INA 245(a):

1. Physically presenting oneself for questioning;
2. Questioning by immigration authorities not required;
3. Admission in a particular status not required.

What Evidence Do I Need?

- **New USCIS AOS Policy Manual**: Applicant must support and sufficiently establish the claim that he/she was admitted as foreign national and not as presumed U.S. citizen. Applicant "should **submit persuasive evidence** to establish he/she … was admitted as a foreign national."
- AILA letter of 3/10/16 states USCIS should delete this paragraph. Neither *Areguillin* nor *Quilantan* requires applicant show that inspector thought he/she was a foreign national.

USCIS Field Operations Directorate Q&A April 7, 2016

1. Primary evidence: Form I-94 or other DHS document
2. Secondary evidence: documents created by a non-governmental individual or entity in the ordinary course of business
3. Written statements under penalty of perjury
   - From the applicant and/or
   - From a witness *present at the time and place of the claimed admission*

USCIS Guidance (cont.)

A statement that does little more than make conclusory allegations may have little weight. By contrast, a statement that provides **considerable factual detail** about the claimed admission could well be enough to establish the claim.

Evidence for Declaration

- Date, time, place of border crossing
- Manner of arrival (on foot, in a vehicle, etc.)
- Did applicant have any travel documents?
- Was inspector aware of applicant's presence?
- Any claim of US citizenship by applicant or anyone in his/her party?

Evidence for Declaration (cont.)

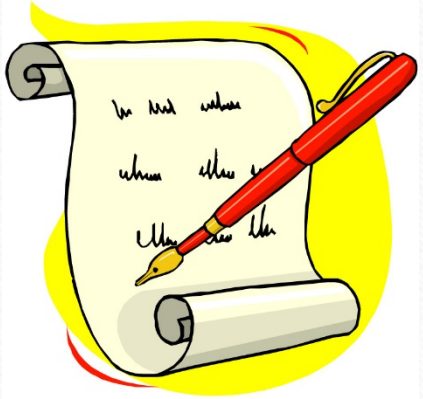
- Did the inspector talk to the applicant or anyone else? What was said?
- USCIS may interview applicant and witnesses under oath.

Should I file this case?

- If no witnesses other than applicant;
- If applicant was a child at time of border crossing;
- If only witnesses are undocumented themselves;
- If witnesses (i.e. parents) paid a smuggler to bring applicant to US;
- If applicant committed fraud or misrepresentation to gain entry.

Preparing declarations

- *See* Best Practice Tips in handout
- Be specific, but…
- Don't overwhelm with details;
- Question client and any witnesses to resolve discrepancies;
- Make sure client reviews declaration thoroughly



Filing Tips

- Do not enter "EWI" on adjustment;
- State "inspected, but no status"
- Provide a copy of *Matter of Quilantan;*
- Expect a Request for Initial Evidence;
- Provide another copy of *Quilantan*

The Interview

- *See* handout for sample questionnaire;
- Officer will type up a statement;
- Review for inaccuracies prior to allowing client to sign;
- Case will be sent to supervisor for review.

What is District 23 doing?

- No decisions
- Denials
- Basis of denials same as prior to AILA letter:

Denial Language

"Since there is no record of your claimed inspection and admission by CBP, we conclude that you were not admitted lawfully."

More Denial Language

"The evidence you presented does not overcome the fact that there is no record of your claimed admission."

More Denial Language

"Simply going on record, or testifying, without supporting documents is not sufficient to meet the burden of proof in immigration proceedings."

WRONG, WRONG & WRONG

- Per *Quilantan* and *Areguillin*, **testimony alone is sufficient** to prove inspection and admission.
- Since when does CBP track every wave-through entry into the U.S.?
- CBP did not even exist prior to 2003.

Hope for the future

- Motions to Reopen
- Contact AILA or LACBA officers if receive denial
- Test case for litigation?