

MATTER OF T—

In SECTION 245 Proceedings

A-11410941

Decided by Commissioner September 8, 1961

Adjustment of status—Section 245, as amended—Eligibility as alien inspected and admitted—False claim to citizenship.

An alien who has appeared before an examining immigration officer and has gained admission to the United States upon a knowing false claim to United States citizenship has been “inspected and admitted” within the meaning of section 245 of the Act. (Overrules contrary holding in *Matter of K—B—N—*, 9—50.) *

BEFORE THE COMMISSIONER

DISCUSSION: This case comes forward on appeal from the order of the District Director denying the application for adjustment of status under section 245, as amended.

The applicant is a 27-year-old married female, native and citizen of China, who last gained entry into the United States on July 26, 1950, at the age of 17, upon the false claim that her father was a citizen of the United States who had resided therein prior to her birth. While there is some doubt as to her knowledge of the falsity of her claim, for the purpose of this decision it will be assumed that she was a knowing party to the successful fraud.

Admission to this country as a United States citizen following appearance before an examining immigration officer constitutes an “inspection” within the language of section 245. To that extent, *Matter of K—B—N—*, 9—50, is overruled.

The age of the applicant, the degree of intangible pressures exerted, the extent of the fraud, the proximity in time between the inspection and the application under section 245, are factors properly to be taken into consideration in the exercise of the discretionary powers conferred by section 245. An evaluation of those factors in the instant case does not warrant other than a grant of the application for adjustment of status.

ORDER: It is ordered that the application be granted.

**Editor's Note:* See *Matter of S—*, 9—599, overruling the holding in this decision and adhering to the holding in *Matter of K—B—N—*, 9—50.