

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DEMETRIO MARTIN URIAS-
GAXIOLA,

Petitioner,

v.

TODD BLANCHE, Attorney
General,

Respondent.

No. 22-1474

Agency No.
A209-808-635

OPINION

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted May 18, 2026
Phoenix, Arizona

Filed September 2, 2026

Before: Marsha S. Berzon, Milan D. Smith, Jr., and
Andrew D. Hurwitz, Circuit Judges.

Opinion by Judge Berzon

SUMMARY*

Immigration

Granting in part and denying in part Demetrio Urias-Gaxiola's petition for review of a decision of the Board of Immigration Appeals, the panel held that the BIA abused its discretion by affirming an immigration judge's denial of Urias-Gaxiola's motion to amend a pleading to correct a factual admission.

Through counsel's written pleadings, Urias-Gaxiola admitted that he entered the United States without admission or parole after inspection by an immigration officer and conceded removability on that basis. In the motion to amend his pleadings, he averred that he had last entered the U.S. lawfully with a visa.

An attorney's factual admission in removal proceedings is generally binding on the noncitizen. However, under *In re Velasquez*, 19 I. & N. Dec. 377 (BIA 1986), and *Santiago-Rodriguez v. Holder*, 657 F.3d 820 (9th Cir. 2011), a noncitizen may withdraw such an admission by establishing that it is untrue.

The panel held that the BIA erred in affirming the IJ's denial of the motion to amend because the IJ denied Urias-Gaxiola's motion without allowing him to present evidence that the admission was untrue. The BIA also impermissibly usurped the IJ's factfinding role by determining in the first

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

instance that Urias-Gaxiola could not meet his burden under *Velasquez/Santiago-Rodriguez*.

Accordingly, the panel remanded for the IJ to determine, after permitting live testimony, whether Urias-Gaxiola is entitled to withdraw the challenged admission and, if so, whether Urias-Gaxiola is nonetheless removable. The panel denied the remainder of the petition in a concurrently filed memorandum disposition.

COUNSEL

Siovhon S. Ayala (argued), Ayala Law Office PC, Tucson, Arizona, for Petitioner.

Deitz P. Lefort (argued), Trial Attorney; Brianne W. Cohen, Senior Litigation Counsel; Office of Immigration Litigation; Brett A. Shumate, Assistant Attorney General; Civil Division, United States Department of Justice, Washington, D.C.; for Respondent.

OPINION

BERZON, Circuit Judge:

A noncitizen in removal proceedings may withdraw a factual admission by an attorney by establishing the admission is untrue. *Santiago-Rodriguez v. Holder*, 657 F.3d 820, 832 (9th Cir. 2011). Seeking to do just that, petitioner Demetrio Martin Urias-Gaxiola moved to amend a pleading submitted by his attorney and sought to testify that an admission in that pleading was factually incorrect. The immigration judge (“IJ”) prohibited Urias-Gaxiola from so testifying and summarily denied his motion to amend. The Board of Immigration Appeals (“BIA”) upheld the denial. It also denied Urias-Gaxiola’s motion to remand for the purpose of presenting evidence in support of the motion to amend.

The BIA abused its discretion by refusing to give Urias-Gaxiola a chance to testify that his attorney’s initial admission was untrue or incorrect. Accordingly, we grant the petition for review in part and remand for the IJ to hear the petitioner’s testimony, review any other evidence he submits on this issue, and make the factual findings necessary to determine whether the petitioner may withdraw the disputed admission. We deny the remainder of the petition for the reasons stated in a concurrently filed memorandum disposition.

I

The petitioner, Urias-Gaxiola, is a native and citizen of Mexico. He last entered the United States through Nogales, Arizona.

The government issued Urias-Gaxiola a notice to appear (“NTA”) in June 2017, charging that he was removable for being present in the country without admission or parole. *See* 8 U.S.C. § 1182(a)(6)(A)(i). The NTA alleged that he (1) was not a U.S. citizen, (2) was a Mexican citizen, (3) arrived in the United States through Nogales on or about December 31, 2002, and (4) had not been admitted or paroled after inspection by an immigration officer. In January 2018, Urias-Gaxiola filed, through counsel, a responsive pleading admitting each of the NTA’s four allegations and applied for cancellation of removal. The IJ then scheduled a hearing on the merits of his cancellation application.

On April 10, 2018, a month before the scheduled hearing, Urias-Gaxiola’s attorney moved to amend his pleading. The motion stated that although Urias-Gaxiola continued to admit to the NTA’s first three allegations, he now denied the fourth—that he had entered without admission or parole. Instead, counsel averred, Urias-Gaxiola “last entered the U.S. lawfully with a visa.”

At the start of the hearing on the cancellation application, the IJ, without explanation, denied Urias-Gaxiola’s motion to amend his pleading. Nonetheless, Urias-Gaxiola’s attorney called him to the stand and asked him about the circumstances of his last entry into the United States. Urias-Gaxiola testified that he had entered the country using a visa. He also testified that he did not recall admitting in his initial pleading that he had entered without inspection. At that point, the IJ interrupted, asking, “Where are you going with this, Counsel?” Urias-Gaxiola’s lawyer explained that “the way that he entered [the country], it’s material and there was a mistake in the written pleadings based on what he subsequently explained.” The IJ responded that he had

already found Urias-Gaxiola removable based on the lawyer's initial pleading: "You [filed] it. All of a sudden, you're asking him does he remember it? You're the one who did it. Presumably you did it based upon what he told you. . . . I don't know how you work. The charge has been sustained. We're not going into it." The IJ directed counsel not to ask Urias-Gaxiola further questions about his entry and to focus on his eligibility for cancellation of removal. The attorney complied.

At the end of the hearing, the IJ ruled that Urias-Gaxiola had testified credibly but had not shown the necessary level of hardship to qualifying relatives to warrant cancellation of removal. The IJ stated that he had found Urias-Gaxiola removable "because Counsel for [Urias-Gaxiola] submitted a document to the Court indicating that [he] admitted the allegations and conceded the charge of inadmissibility."

Urias-Gaxiola appealed to the BIA, challenging the IJ's denial of his motion to amend the pleading and the IJ's adverse hardship determination. While the appeal was pending, Urias-Gaxiola filed a motion asking the BIA to remand the case to the IJ. He attached to that motion an affidavit averring that he had last entered the United States in "approximately" May 2004 using a border crossing card, a form of visitor visa. The affidavit also stated that the border crossing card expired in 2011, that Urias-Gaxiola was unsure at the time of his hearing where he had stored the card, and that he found the card later while searching his home in North Carolina. A copy of the card was attached to the affidavit. The remand motion explained that Urias-Gaxiola had "stated to counsel he entered without inspection because he did not believe he was actually inspected when he

arrived,” but he later learned that his “interpretation of ‘entry without inspection’ was erroneous.”¹

The BIA dismissed Urias-Gaxiola’s appeal and rejected the motion to remand. In affirming the IJ’s denial of the motion to amend and denying the motion to remand, the BIA held that Urias-Gaxiola’s visa was not previously unavailable evidence and did not establish that he had entered the country lawfully. The BIA also determined that his affidavit conflicted with a Form I-213 (Record of Deportable/Inadmissible Alien) stating that Urias-Gaxiola had entered in 2002 and had later admitted to entering without inspection, as well as with his cancellation application, in which he listed the year of his last entry as 2003. As to cancellation, the BIA affirmed the IJ’s hardship determination and held that Urias-Gaxiola’s due-process claim failed because he had not shown prejudice.

Urias-Gaxiola timely petitioned for review.

II

We review for abuse of discretion “whether the BIA has clearly departed from its own standards.” *Salgado v. Sessions*, 889 F.3d 982, 987 (9th Cir. 2018). We review the

¹ Both we and the BIA have held that noncitizens are inspected and admitted within the meaning of the Immigration and Nationality Act so long as they present themselves for inspection and are waved through the border by an immigration officer. *Saldivar v. Sessions*, 877 F.3d 812, 814 (9th Cir. 2017) (“We reaffirm that an alien is ‘admitted’ when he presents himself for inspection and is waved through a port of entry”); *In re Quilantan*, 25 I. & N. Dec. 285, 293 (BIA 2010) (holding that “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 that such an alien has satisfied the ‘inspected and admitted’ requirement”).

denial of a motion to remand under the same standard. *Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005). The BIA abuses its discretion when it “acts arbitrarily, irrationally, or contrary to law,” “fails to offer a reasoned explanation for its decision, or . . . distorts or disregards important aspects of the claim.” *Alcaarez-Rodriguez v. Garland*, 89 F.4th 754, 759 (9th Cir. 2023) (citation modified).

For the following reasons, we hold that the BIA abused its discretion by affirming the IJ’s denial of the motion to amend the pleading.

A

A removal proceeding commences with the issuance of an NTA. The NTA must specify (among other things) “[t]he charges against the alien and the statutory provisions alleged to have been violated.” 8 U.S.C. § 1229(a)(1)(D). By regulation, the IJ “shall require the [charged individual] to plead to the notice to appear by stating whether he or she admits or denies the factual allegations and his or her removability under the charges contained therein.” 8 C.F.R. § 1240.10(c). We refer to this responsive pleading as the answer.

If the noncitizen denies the allegations, the parties may submit evidence concerning the charges in the NTA. *Id.* § 1240.10(d). If the ground of removability is presence without admission, the noncitizen has the burden of establishing admissibility or lawful presence. 8 U.S.C. § 1229a(c)(2). The IJ must determine the noncitizen’s removability “based only on the evidence produced at the hearing.” 8 U.S.C. § 1229a(c)(1)(A).

In contrast, “[i]f the [noncitizen] admits the factual allegations and admits his or her removability under the charges and the immigration judge is satisfied that no issues of law or fact remain, the immigration judge may determine that removability as charged has been established by the admissions of the [noncitizen].” 8 C.F.R. § 1240.10(c). “[A]n alien’s admissions to charges of removability can satisfy the government’s burden of proof if the IJ relies upon the admissions in making her determination.” *Maie v. Garland*, 7 F.4th 841, 846 (9th Cir. 2021). So, “[i]f the individual admits the factual allegations at [the pleading] stage and the IJ accepts the admission, it binds the alien and relieves the Government of the obligation to present any evidence on that factual question.” *Santiago-Rodriguez*, 657 F.3d at 829 (citation modified). Except under the circumstances described below, the same rule applies when an attorney admits the allegations on the noncitizen’s behalf. *Id.*

As in federal court, pleadings may be amended in immigration court. Agency regulations provide, for example, that “additional or substituted charges of inadmissibility and/or deportability and/or factual allegations may be lodged” in writing “[a]t any time during the proceeding.” 8 C.F.R. § 1240.10(e); *accord id.* § 1003.30; *see, e.g., Martinez v. Barr*, 941 F.3d 907, 923–24 & n.10 (9th Cir. 2019). And the BIA has held that a defective NTA may be amended to include legally required information, even though no statute or regulation expressly permits amendment. *In re R-T-P-*, 28 I. & N. Dec. 828, 832–33 (BIA 2024). In so holding, the BIA analogized to Federal Rule of Civil Procedure 15, which provides that “[t]he court should freely give leave [to amend a pleading] when justice so requires.” Fed. R. Civ. P. 15(a)(2). Observing that, as in

federal court, “[t]he possibility of amending a document, including a case-initiating document, is inherent in the context of most [immigration] litigation,” the BIA held in *R-T-P-* that “neither the statute nor regulations prohibit an amendment to a notice to appear.” 28 I. & N. Dec. at 832.

IJs have “broad authority to grant motions to amend documents in removal proceedings” and “routinely” permit the amendment of pleadings when “appropriate and necessary.” *Id.* at 839–40. As the BIA has recognized, this practice accords with the federal courts’ “liberal stance toward the amendment of pleadings where it is consistent with their longstanding policy favoring the resolution of disputes on the merits.” *Id.* at 832.²

B

R-T-P- did not define the circumstances in which it is “appropriate and necessary” for an IJ to grant a noncitizen’s motion to amend an answer. But a line of cases in both the BIA and this court indicate that Urias-Gaxiola was entitled to withdraw the disputed admission by amending the answer filed by his attorney if he showed the admission was untrue. The IJ denied Urias-Gaxiola’s motion to amend without giving him an opportunity to make that showing. By affirming that premature denial, the BIA erred.

² *R-T-P-* referred to Rule 15 by analogy. Depending on the timing and stage of litigation, amendment under Rule 15 may be as of right or may require the court’s leave. Fed. R. Civ. P. 15(a). As interpreted, the Federal Rules do not require a court to give leave in many instances. *See, e.g., Branch Banking & Tr. Co. v. D.M.S.I., LLC*, 871 F.3d 751, 764 (9th Cir. 2017) (lack of diligence); *Quinault Indian Nation v. Pearson*, 868 F.3d 1093, 1100–01 (9th Cir. 2017) (futility). *R-T-P-* was, of course, not incorporating Rule 15 wholesale, just the general principle of liberality regarding amending pleadings. *See* 28 I. & N. Dec. at 832 & n.4.

i

The BIA's precedential decision *In re Velasquez*, 19 I. & N. Dec. 377 (BIA 1986), governs the treatment of an admission by a noncitizen's attorney in a written filing. *Santiago-Rodriguez*, 657 F.3d at 830. *Velasquez* held that "[a]bsent egregious circumstances, a distinct and formal admission made before, during, or even after a proceeding by an attorney acting in his professional capacity binds his client as a judicial admission," at least where the admission "is made as a tactical decision." 19 I. & N. Dec. at 382. Urias-Gaxiola does not dispute that his initial answer, filed by his attorney, meets these criteria and so presumptively binds him.

But "*Velasquez* sets forth three types of 'egregious circumstances' that, if present, justify relieving an alien of his attorney's admissions" in formal pleadings that would otherwise be binding. *Santiago-Rodriguez*, 657 F.3d at 831. A noncitizen is not bound by his counsel's admissions if (1) so binding him "would produce an unjust result," (2) he "subsequently offers evidence proving that the factual admissions and concession of removability were untrue or incorrect," or (3) "such admissions were the result of unreasonable professional judgment—i.e., ineffective assistance of counsel." *Id.* at 831–32 (citation modified). These factors "are all related to the due process guarantee that removal proceedings accord with fundamental fairness." *Id.* at 831. They "all concern situations in which an attorney's admission is not probative of the truth of the NTA's factual allegation[s], or where using the admission as evidence of removability would not be fundamentally fair, or both." *Id.*

Urias-Gaxiola contends that this case involves the second circumstance—that his original answer, filed by his attorney, was untrue or incorrect. We agree that his motion to amend implicated this circumstance.³

Urias-Gaxiola’s original answer admitted that he entered the United States without admission or parole after inspection by an immigration officer and conceded removability on that basis. Urias-Gaxiola’s proposed amended answer denied the charge of removability and averred that he had “last entered the U.S. lawfully with a visa.” His attorney explained at his hearing that “there was a mistake in the written pleadings based on what [Urias-Gaxiola] subsequently explained” to her.

Having asserted a basis to be relieved of his counsel’s admission, Urias-Gaxiola was entitled to “offer[] evidence proving that the factual admission[] and concession of removability were untrue or incorrect.” *Santiago-Rodriguez*, 657 F.3d at 832 (citation modified). If the IJ found that this evidence proved that the challenged admission in the initial answer was not true, the motion to amend should have been granted.

³ Urias-Gaxiola does not address the first or third *Velasquez/Santiago-Rodriguez* circumstance, so neither do we. We also do not consider when, if ever, it would be “appropriate and necessary,” *R-T-P-*, 28 I. & N. Dec. at 839, for an IJ to grant a noncitizen’s motion to amend the answer on grounds other than the *Velasquez/Santiago-Rodriguez* circumstances. *Cf. id.* at 832 (taking guidance from “general principles and jurisprudence regarding . . . amending of documents” and recognizing that federal courts “have taken a liberal stance toward the amendment of pleadings”).

ii

The IJ, however, denied Urias-Gaxiola's motion to amend without allowing him to present evidence that the disputed admission was untrue or incorrect. In affirming that erroneous denial, the BIA erred.

To understand why, recall what happened at Urias-Gaxiola's hearing: The IJ did not determine whether Urias-Gaxiola had established one of the circumstances that, under *Velasquez* and *Santiago-Rodriguez*, would justify withdrawing a factual admission in a pleading. In fact, the IJ did not acknowledge that a noncitizen may withdraw his or her attorney's written admission under certain circumstances. Instead, the IJ summarily denied Urias-Gaxiola's motion to amend, gave no reason for doing so, and barred him from testifying that his initial pleading was untrue or incorrect. These actions were "inconsistent with *Velasquez* and due process." *Santiago-Rodriguez*, 657 F.3d at 834.

The IJ's lack of reasoning in denying the motion to amend is not directly before us, as the BIA supplied its own reasoning in affirming that denial. *See Rodriguez v. Holder*, 683 F.3d 1164, 1169 (9th Cir. 2012). Where, as here, the BIA reviews the IJ's decision de novo, "any error committed by the IJ will be rendered harmless by the Board's application of the correct legal standard." *Brezilien v. Holder*, 569 F.3d 403, 411 (9th Cir. 2009) (citation modified). But that rule does not help the government, as the BIA did not apply *Velasquez* properly.

Unlike the IJ, the BIA recognized that "a noncitizen is not bound by an attorney's admission or concession of removability if the noncitizen subsequently offers evidence proving that the factual admission or concession was untrue

or incorrect.” The BIA also recognized that Urias-Gaxiola had “sought to amend [his] pleadings, alleging that the prior admission and concession was factually incorrect because he last entered the United States with a visa.” The BIA ignored, however, the most critical consideration: the IJ prohibited Urias-Gaxiola from offering evidence to establish an “egregious circumstance” under *Velasquez*. The BIA thus “deprive[d] [Urias-Gaxiola] of an opportunity to be heard, present evidence, and to press his case fully.” *Santiago-Rodriguez*, 657 F.3d at 834 (citation modified).

The BIA concluded that Urias-Gaxiola should not have an opportunity to establish that his answer was untrue or incorrect because, in its view, the affidavit submitted with his motion to remand conflicted with existing evidence in the record as to the date and manner of his entry into the United States. But, “where the IJ has not made a necessary factual finding, [an agency] regulation requires the BIA to remand the factual inquiry to the IJ rather than making its own factual finding on the matter.” *Brezilien*, 569 F.3d at 413; *see* 8 C.F.R. § 1003.1(d)(3)(iv) (providing that “the Board will not engage in factfinding in the course of deciding cases”). The evidence attached to the motion to remand was never presented to or considered by the IJ, so the IJ had no chance to address or resolve the factual disputes identified by the BIA. By determining in the first instance that Urias-Gaxiola could not meet his evidentiary burden under *Velasquez*, the BIA impermissibly usurped the IJ’s factfinding role.

Urias-Gaxiola’s opportunity to submit an affidavit in support of remand did not cure the IJ’s error. We have consistently held that an IJ may not “declin[e] to hear relevant testimony because of a prejudgment about . . . the probative value of the testimony.” *Lopez-Umanzor v. Gonzales*, 405 F.3d 1049, 1056 (9th Cir. 2005) (citation

modified). “[A]dmission of a party’s testimony is particularly essential to a full and fair hearing where credibility is a determinative factor[.]” *Oshodi v. Holder*, 729 F.3d 883, 889 (9th Cir. 2013) (en banc). Accordingly, we have explained that a noncitizen’s “written declaration outlining the facts of his [claim] is no response to the IJ’s refusal to hear his testimony” when that testimony “stands at the center of his claim and can, if credible, support [the claim] without further corroboration.” *Id.* at 889–90.

That principle applies here. The IJ barred Urias-Gaxiola from testifying about the manner of his entry into the United States, seemingly based on the mistaken view that such testimony was irrelevant given his counsel’s concession of removability. Urias-Gaxiola’s testimony would have been central to establishing whether an “egregious circumstance” relieved him of that concession. In particular, because Urias-Gaxiola sought to contradict the factual basis for his attorney’s initial admission, his ability to make the necessary showing depended in large part on whether the testimony he sought to present was credible—a determination entrusted in the first instance to the IJ. *See* 8 C.F.R. § 1003.1(d)(3)(i) (providing that the BIA may review an IJ’s credibility determination only for clear error). Because Urias-Gaxiola was prevented from testifying, “the IJ’s ability to make a credibility determination . . . [wa]s severely hampered. The IJ did not have the opportunity to judge [Urias-Gaxiola’s] demeanor, candor, or responsiveness while testifying about” the circumstances of his entry into the United States, “nor did the IJ have the ability to compare for consistency his oral presentation of those events to the way he described them in his written [submissions].” *Oshodi*, 729 F.3d at 891 (citation modified); *see* 8 U.S.C. § 1229a(c)(4)(C) (requiring credibility determinations to be based on “the totality of the

circumstances”). As well, Urias-Gaxiola was denied a chance to explain any perceived inconsistencies between his proposed amended answer and other evidence in the record. See *Shrestha v. Holder*, 590 F.3d 1034, 1044 (9th Cir. 2010).⁴

“The end result of the IJ’s restriction on [Urias-Gaxiola’s] testimony was that it ‘prevented the introduction of significant testimony’ that was critical to the merits” of his *Velasquez* argument. *Oshodi*, 729 F.3d at 893 (citation omitted) (quoting *Lopez-Umanzor*, 405 F.3d at 1056). By making its own credibility determination, the BIA usurped the IJ’s factfinding role with regard to whether Urias-Gaxiola could establish one of the *Velasquez/Santiago-Rodriguez* factors and so avoid being bound by his attorney’s pleading admission. That usurpation was error.

⁴ In affirming the denial of Urias-Gaxiola’s motion to amend, the BIA noted that his proposed amended answer was inconsistent with a Form I-213 (Record of Deportable/Inadmissible Alien) in the record. The form stated that Urias-Gaxiola had admitted in 2017 to a Border Patrol agent to entering without inspection in 2002. Had Urias-Gaxiola been allowed to testify about the manner of his entry, the government could have used the form to attempt to undermine his credibility and to dispute the substance of his testimony. See, e.g., *Sanchez v. Holder*, 704 F.3d 1107, 1109 (9th Cir. 2012) (per curiam). But, as the BIA correctly recognized, the IJ did not base his removability determination on the inconsistency identified by the BIA. The IJ found Urias-Gaxiola removable solely “because Counsel for the Respondent submitted a document to the Court indicating that the Respondent admitted the allegations and conceded the charge of inadmissibility.” The IJ otherwise found Urias-Gaxiola credible as to the subjects about which he testified. The IJ could not have fairly found that Urias-Gaxiola’s proposed amended answer was not credible without allowing him to testify about the disputed admission. *Oshodi*, 729 F.3d at 889.

iii

To explain how the parties should proceed on remand, we return to the procedures that govern their pleadings. The government does not dispute, and we agree, that Urias-Gaxiola sought to amend his answer through the proper mechanism: filing a timely motion with the IJ. *See R-T-P*, 28 I. & N. Dec. at 839–40. If the IJ determines—after giving Urias-Gaxiola a full and fair opportunity to testify about the circumstances of his entry into the United States—that the challenged admission in the original answer was untrue or incorrect, it will be “appropriate and necessary” for the IJ to exercise his “broad authority to grant [the] motion[] to amend.” *Id.* at 839. The IJ then may no longer treat the withdrawn admission as binding. *See Santiago-Rodriguez*, 657 F.3d at 834.

Allowing Urias-Gaxiola to withdraw his initial admission and to amend his answer will not resolve the question of whether he is removable. When a noncitizen denies an allegation in the NTA, “the removal hearing enters an evidentiary stage during which the IJ receives admissible evidence on any issue not resolved to his satisfaction at the pleading stage.” *Perez-Mejia v. Holder*, 663 F.3d 403, 411 (9th Cir. 2011); *see* 8 C.F.R. § 1240.10(d) (providing that the IJ “shall receive evidence as to any unresolved issues, except that no further evidence need be received as to any facts admitted during the pleading”). Even if Urias-Gaxiola establishes that his lawyer’s original admission was untrue or incorrect, he will still have the burden of proving “by clear and convincing evidence that he . . . is lawfully in the United States pursuant to a prior admission” or “that he . . . is clearly and beyond a doubt entitled to be admitted to the United States and is not inadmissible as charged.” 8 C.F.R. § 1240.8(c). Evidence that Urias-Gaxiola lawfully entered

the United States using a valid visa may not suffice to make this showing if he overstayed the visa.⁵ *See id.* § 1240.10(e) (allowing the government to serve “additional or substituted charges of inadmissibility and/or deportability and/or factual allegations” “[a]t any time during the proceeding”); 8 U.S.C. § 1227(a)(1)(B)–(C) (deeming removable admitted noncitizens who are present in violation of law and admitted nonimmigrants who fail to maintain their nonimmigrant status).⁶ If the government charges Urias-Gaxiola with overstaying his visa, the burden to show that he is removable on that ground will fall on the government. *See* 8 C.F.R. § 1240.8(a) (“A respondent charged with deportability shall be found to be removable if the [Department of Homeland Security] proves by clear and convincing evidence that the respondent is deportable as charged.”).

⁵ Even if the government can prove that Urias-Gaxiola overstayed his visa, he could qualify for adjustment of status as an “immediate relative” of his eldest U.S. citizen daughter, who is now older than 21. 8 U.S.C. §§ 1151(b)(2)(A)(i), 1255(a), (c). Adjustment of status is available only for noncitizens who were “inspected and admitted or paroled” into the United States, *id.* § 1255(a), a category that includes those who entered the country legally on a visa but stayed after the visa expired, *Sanchez v. Mayorkas*, 593 U.S. 409, 418 (2021). An applicant for adjustment of status generally must have maintained lawful status from entering the United States through the date of filing the application, but immediate-relative applicants are exempt from this requirement. 8 U.S.C. § 1255(c). So if Urias-Gaxiola established that he had lawfully entered the United States on a visa, his daughter could file on his behalf an alien relative petition, which, if approved, would allow him to apply for adjustment of status right away. *See id.* § 1151(b).

⁶ Having concluded that the BIA erred in affirming the IJ’s denial of Urias-Gaxiola’s motion to amend, we need not consider whether the BIA independently erred in denying his motion to remand.

III

In sum, the BIA's affirmance of the denial of the motion to amend the pleading was an abuse of discretion. We therefore grant the petition as to Urias-Gaxiola's motion to amend the pleading. We remand for the IJ to determine, after permitting live testimony, if requested, whether Urias-Gaxiola is entitled to withdraw the challenged admission in his answer and, if so, whether Urias-Gaxiola is nonetheless removable. We deny the remainder of the petition for the reasons stated in our concurrently filed memorandum disposition.

PETITION GRANTED IN PART, DENIED IN PART; REMANDED.