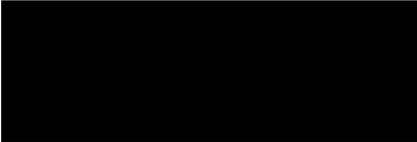




U.S. Citizenship
and Immigration
Services

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FILE:



Office: Chicago

Date: **AUG 24 2005**

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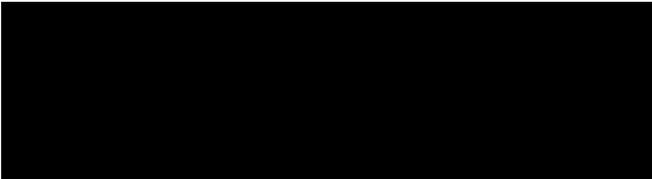
Applicant:



APPLICATION:

Application for Adjustment from Temporary to Permanent Resident Status under
Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C.
§ 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status in the legalization program was denied by the District Director, Chicago, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate the ability to write in the English language.

On appeal, counsel states section 245A of the Act provides for alternate means of fulfilling the requirements. He asserts the applicant was not given the opportunity to pursue these means. He points out the differences between the English, history and government provisions in the section 245A legalization program and those in naturalization proceedings.

Any alien who has been lawfully admitted for temporary resident status may apply for adjustment of status if the alien (A) can demonstrate that he or she meets the requirements of section 312 of the Immigration and Nationality Act (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or, (B) can demonstrate he or she is satisfactorily pursuing a course of study recognized by the Attorney General to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States. *See* 8 C.F.R. § 245a.3(b)(4).

No person except as otherwise provided in this title shall hereafter be naturalized as a citizen of the United States upon his own application who cannot demonstrate an understanding of the English language, including an ability to read, write and speak words in ordinary usage in the English language: Provided, that the requirements of this paragraph relating to ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable conditions shall be imposed upon the applicant.... Section 312(a)(1) of the Act; 8 U.S.C. 1423 (a)(1).

An applicant may demonstrate that the section 312 requirements have been met by speaking and understanding English during the course of the permanent residence interview, or by passing a standardized section 312 test given in the English language by the Legalization Assistance Board with the Educational Testing Service or the California State Department of Education with the Comprehensive Adult Student Assessment System. *See* 8 C.F.R. § 245a.3(b)(4)(iii).

Pursuant to 8 C.F.R. § 245a.1(s), "satisfactorily pursuing" means:

(1) An applicant for permanent resident status has attended a recognized program for at least 40 hours of a minimum 60-hour course as appropriate for his or her ability level, and is demonstrating progress according to the performance standards of the English/citizenship course prescribed by the recognized program in which he or she is enrolled (as long as enrollment occurred on or after May 1, 1987, course standards include attainment of particular functional skills related to communicative ability, subject matter knowledge, and English language competency, and attainment of these skills is measured either by successful completion of learning objectives appropriate to the applicant's ability level, or attainment of a determined score on a test or tests, or both of these); or,

(2) An applicant presents a high school diploma or general educational development diploma (GED) from a school in the United States. A GED gained in a language other than English is acceptable only if a GED

English proficiency test has been passed. (The curriculum for both the high school diploma and the GED must have included at least 40 hours of instruction in English and U.S. history and government); or,

(3) An applicant has attended for a period of one academic year (or the equivalent thereof according to the standards of the learning institution), a state recognized, accredited learning institution in the United States and that institution certifies such attendance (as long as the curriculum included at least 40 hours of instruction in English and U.S. history and government); or,

(4) An applicant has attended courses conducted by employers, social, community, or private groups certified (retroactively, if necessary, as long as enrollment occurred on or after May 1, 1987, and the curriculum included at least 40 hours of instruction in English and U.S. history and government) by the district director or the Director of the Outreach Program under Sec. 245a.3(b)(5)(i)(D) of this chapter; or,

(5) An applicant attests to having completed at least 40 hours of individual study in English and U.S. history and government and passes the proficiency test for legalization, called the IRCA Test for Permanent Residency, indicating that the applicant is able to read and understand minimal functional English within the context of the history and government of the United States. Such test may be given by INS, as well as, State Departments of Education (SDEs) (and their accredited educational agencies) and Qualified Designated Entities in good-standing (QDEs) upon agreement with and authorization by INS.

To satisfy the English language and basic citizenship skills requirements under the "satisfactorily pursuing" standard as defined at sec. 245a.1(s) of this chapter the applicant must submit evidence of such satisfactory pursuit in the form of a "Certificate of Satisfactory Pursuit" (Form I - 699) issued by the designated school or program official attesting to the applicant's satisfactory pursuit of the course of study as defined at sec. 245a.1(s) (1) and (4) of this chapter; or a high school diploma or general educational development diploma (GED) under sec. 245a.1(s)(2) of this chapter; or certification on letterhead stationery from a state recognized, accredited learning institution under sec. 245a.1(s)(3) of this chapter; or evidence of having passed the IRCA Test for Permanent Residency under sec. 245a.1(s)(5) of this chapter. 8 C.F.R. § 245a.3(b)(4)(iv).

The record reveals that the applicant, when interviewed for permanent residence on May 19, 2003, failed to meet the section 312 requirement of writing in the English language. The applicant was re-tested pursuant to 8 C.F.R. § 245a.3(a)(4)(B) on November 3, 2004, and again failed the writing test. There is also no evidence that he has passed a standardized section 312 test. Thus, he has not shown that he meets the requirements of section 312 of the Act.

The applicant has not submitted Form I-699, Certificate of Satisfactory Pursuit, or a high school or GED diploma, or proof of attendance for one academic year at a state recognized learning institution, or evidence of having passed the IRCA Test for Permanent Residency. Thus, he applicant has not demonstrated that he "satisfactorily pursued" a course of study recognized by the Attorney General.

Counsel correctly points out that, in the legalization program, an applicant may qualify by either meeting the section 312 requirements or demonstrating "satisfactory pursuit." Counsel further points out that the entire "satisfactory pursuit" option in legalization demonstrates the intent of Congress to allow for a more relaxed standard than that applied in naturalization. Counsel contends the application should be approved on the basis of such a reasonable standard, coupled with the fact that the applicant was able to verbally communicate well in the English language and only had difficulty writing in English.

Counsel's point is well-taken regarding the intent of congress to allow flexibility in the section 312 standards in the legalization program. However, the ability to write in the English language remains a basic component of the requirements.

Counsel notes this application for permanent residence was filed in 1992, and yet the applicant was not scheduled for an interview until 2003. He claims the delay adversely affected the applicant's opportunity to acquire Form I-699, Certificate of Satisfactory Pursuit, as such courses were not being offered in 2003 and such certificates were therefore no longer being issued. However, a Certificate of Satisfactory Pursuit may be submitted at the time of filing Form I-698, subsequent to filing the application but prior to the interview, or at the time of the interview. 8 C.F.R. § 245a.3(b)(4)(iv). Thus, an alien who was called in for an interview shortly after filing his application would have actually had much less time and opportunity to obtain a Certificate of Pursuit than did the applicant. Furthermore, while the delay in setting up the interview is regrettable, such delay actually gave the applicant years of time to improve his ability to write in the English language.

The applicant has not shown that he has met the section 312 requirements or that he satisfactorily pursued an approved course. It is also noted that the applicant is not eligible for a waiver of the requirements due to advanced age or a condition of disability. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.