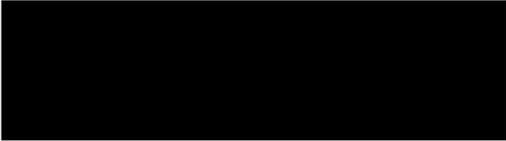




U.S. Citizenship
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Services

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FILE: [REDACTED]
XPW 93 0723 0092

Office: LOS ANGELES

Date: APR 03 2007

IN RE: Applicant: [REDACTED]

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, Chief
Administrative Appeals Office

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

The district director denied the application for adjustment of status from temporary to permanent resident because the applicant failed to demonstrate a minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States.

On appeal, counsel for the applicant states that the applicant has completed 47 hours of English instruction, but was never made aware of the requirement that he demonstrate knowledge and understanding of the history and government of the United States.

Any alien who has been lawfully admitted for temporary resident status under section 245a of the Act may apply for adjustment of status to that of an alien lawfully admitted for permanent residence if the alien can demonstrate that he or she meets the requirements of section 312 of the Immigration and Nationality Act (the Act), as amended, relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States, or can demonstrate that 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. 8 C.F.R. § 245a.3(b)(4)(i).

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 the Immigration and Naturalization Service (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 was scheduled to appear for his adjustment interview on March 17, 2006. The interview notice instructed the applicant to bring with him to the interview a Form I-699, Certificate of Satisfactory Pursuit, or section 312 civics and English tests. The applicant appeared for his adjustment interview as scheduled on March 17, 2006. He did not provide a Form I-699 or Section 312 civics test at the time of his interview. At the conclusion of the interview, the interviewing officer issued a Form I-72 notice to the applicant granting him 30 days to furnish a copy of his Form I-699. In response, counsel stated in a letter dated March 30, 2006, that the applicant had completed 18:35 hours of English as a Second Language instruction, but would be unable to complete 40 hours of classroom instruction within 30 days because he had been hospitalized with chest pain. Counsel requested an additional 60 days for the applicant to submit the Form I-699.

On May 17, 2006, counsel submitted a letter dated April 24, 2006, from the Paramount Adult Education Center, Paramount Unified School District, Paramount, California, stating that the applicant had been enrolled in English as a Second Language, Beginner Low, since March 20, 2006, and had completed a total of 47:27 hours of classroom instruction as of the date of the letter. Counsel also submitted a computer printout with details of the applicant's class attendance from March 9, 2006 to April 10, 2006, along with a patient discharge form from the Martin Luther King, Jr./Drew Medical Center, County of Los Angeles Department of Health Services, Los Angeles,

California, indicating that the applicant was treated at the medical center emergency room on March 24, 2006, for chest pain. The applicant was discharged the next day, March 25, 2006, because his condition was improving and his prognosis was good. He was given an appointment for a follow-up visit on March 30, 2006.

The director denied the application for adjustment of status from temporary to permanent residence on October 11, 2006, because the applicant failed to fully satisfy the English language and knowledge of United States history and government requirement.

On appeal, counsel for the applicant asserts that the interviewing officer told the applicant that he should take an English language class, but failed to inform the applicant of the requirement that he demonstrate knowledge and understanding of United States history and government.

The instructions on the Form I-698, Application to Adjust Status from Temporary to Permanent Resident, state that applicants for adjustment of status to permanent resident must meet the requirements of section 312 of the Act, as amended, by passing a test to demonstrate minimal understanding of ordinary English and understanding of the history and government of the United States or by submitting a certificate of satisfactory pursuit from an accredited learning institution. The instructions on the form direct applicants to contact their local CIS office for information regarding accredited schools. It is the applicant's responsibility to ensure that he or she satisfies all eligibility requirements for adjustment of status to from temporary to permanent resident. Therefore, counsel's assertion cannot be accepted.

Counsel contends that the applicant should have been scheduled for a second interview six months from the date of the March 17, 2006 interview.

If an applicant fails the English literacy and/or the U.S. history and government tests at the time of the interview shall be afforded a second opportunity after six (6) months to pass the tests or submit evidence that he or she is satisfactorily pursuing such knowledge and understanding. 8 C.F.R. 8 C.F.R. § 245a.3(b)(4)(iii)(B). Since the applicant did not take and fail the English and civics tests during his adjustment interview, there was no requirement to provide him with a second opportunity to take and pass the tests six months after the applicant's interview on March 17, 2006.

The applicant is ineligible for adjustment of status from temporary to permanent resident because he failed to demonstrate minimal understanding of ordinary English and knowledge and understanding of the history and government of the United States. Nor has he established that he was satisfactorily pursuing an approved course of study to achieve such an understanding, as set forth at 8 C.F.R. 245a.3(b)(4)(i). Therefore, the appeal must be dismissed.

It is noted that the applicant was arrested in Tucson, Arizona, on March 16, 1990, for possession of a narcotic drug for sale, a felony, possession of a narcotic drug, a felony, and possession of drug paraphernalia, a felony. No complaints were filed in connection with this arrest.

It is further noted that the applicant filed a second Form I-698 with the California Service Center on January 6, 2004, under receipt number WAC 04 065 50752. This application is still pending before CIS.

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