

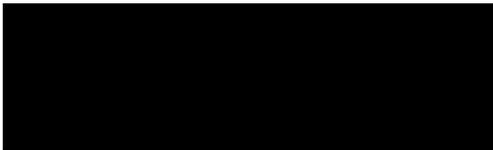
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U.S. Citizenship  
and Immigration  
Services

MAR 12 2007

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FILE:



Office: Texas Service Center

Date:

XPS-91-110-0515

MAR 12 2007

IN RE:

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:

Self-represented

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 in the legalization program was denied by the Director, Texas Service Center, 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 report for fingerprinting. The applicant appealed, the director reopened the matter, and the applicant was fingerprinted. The director then denied the application because the applicant failed to demonstrate the required knowledge of civics and the ability to write in the English language, and failed to provide a criminal record and information regarding public assistance.

In response to the final denial notice, the applicant has provided the criminal record.

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).

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).

The record reveals that the applicant, when interviewed for permanent residence on January 27, 1999, failed to meet the section 312 requirement of demonstrating ability to write in the English language. He was also unable to correctly answer any of the questions regarding history and government and, therefore, failed to meet that requirement. The applicant was scheduled for another opportunity to pass the test six months later, pursuant to 8 C.F.R. 245a.3(b)(4)(iii)(B), but he failed to report. The applicant later improperly applied for naturalization. In conjunction with that application, on February 21, 2004, he was again tested for knowledge of history and government and ability to write in the English language. He again failed to demonstrate knowledge of history and government and ability to write in the English language.. He was given an opportunity to try again, on July 27, 2004, but he failed to report. 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.

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 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. As such, the applicant has not demonstrated that he "satisfactorily pursued" a course of study recognized by the Attorney General.

The applicant has not shown that he meets the section 312 requirements or that he satisfactorily pursued an approved course. However, under 8 C.F.R. § 245a.3(b)(4)(ii), a waiver of these requirements is available if an applicant, *as of the date of application for permanent residence*, is 65 years of age or older, or over 50 years of age and has resided in the United States for at least 20 years.

The applicant was 59 years of age when he filed this application for permanent residence in 1991, but has not claimed to have resided in the United States since 1971. Therefore, he is not eligible for a waiver of the requirements due to advanced age. As such, he is ineligible for permanent residence within the legalization program on this basis.

The regulation at 8 C.F.R. 245a.3(g)(5) states:

*Public cash assistance and criminal history verification.* Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for proper adjudication may result in denial of the application.

The director pointed out that the applicant did not complete #17 on his application for permanent residence, which asks him to indicate whether he has received public assistance. The applicant still has not provided that information. He has failed to provide information necessary for the adjudication of his application.

The director also denied the application because the applicant had not provided an arrest report and final court disposition regarding an arrest on April 17, 2002 that resulted in charges of *Aggravated Battery* and *Aggravated Assault*, sections 784-045 and 784-021 of the Florida Criminal Code, respectively. In response the applicant has provided the arrest report. The report from the Criminal Justice Information Services Division, Federal Bureau of Investigation that was already in the record indicates the charges were dropped/abandoned, and it is concluded that there is no final court disposition the applicant can provide.

The director pointed out that the applicant had already provided the disposition of two counts of an *Aggravated Battery* charge filed on September 23, 1985, case number 85-022621. In that case adjudication of guilt was withheld for count 1, and count 2 was not prosecuted. In the temporary residence proceedings that preceded these permanent resident proceedings, the director found that the applicant had not been convicted.

The applicant has not demonstrated knowledge of history and government of the United States, and the ability to write in the English language. By not providing information concerning public assistance, he has not demonstrated that he is admissible to the United States. He is, therefore, not eligible for permanent resident status within the legalization program.

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