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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529 - 2090

PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

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DATE: JUL 20 2011

OFFICE: HARLINGEN FILE:

[REDACTED]

IN RE: Applicant:

[REDACTED]

APPLICATION: Application to Adjust Status from Temporary to Permanent Resident Status pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application to adjust to permanent resident status pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a, was denied by the director of the Harlingen Field Office and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director denied the application, finding that the applicant had failed to establish that he satisfied the "basic citizenship skills" required under the regulation at 8 C.F.R. § 245a.3(b)(4).

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 (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).

Under section 245A(b)(1)(D)(ii) of the Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled.

The pertinent regulation regarding aliens to be granted an exception to the basic citizenship skills requirement and those circumstances under which the Attorney General could consider a waiver of such requirement is contained at 8 C.F.R. § 245a.3(b)(4)(ii), which states the following:

The requirements of paragraph (b)(4)(i) of this section must be met by each applicant. However, these requirements shall be waived without formal application for persons who, as of the date of application or the date of eligibility for permanent residence under this part, whichever date is later, are:

- (A) Under 16 years of age; or
- (B) 65 years of age or older; or
- (C) Over 50 years of age who have resided in the United States at least 20 years and Submit evidence establishing the 20-year requirement; or
- (D) Developmentally disabled as defined at § 245a.1(v) of this chapter. Such persons must submit medical evidence concerning their developmental disability; or
- (E) Physically unable to comply. The physical disability must be of a nature which renders the applicant unable to acquire the four language skills of speaking, understanding, reading, and writing English in accordance with the criteria and

precedence established in OI 312.1 (a)(2)(iii) (Interpretations). Such persons must submit medical evidence concerning their physical disability.

The record shows that the applicant was born on [REDACTED] and that his Form 1-698 application was filed on June 1, 2005. Therefore, the applicant does fall within the criteria described at 8 C.F.R. § 245a.3(b)(4)(ii)(C) based on his age at the time he filed his application. He was over 50 years of age and resided in the United States more than 20 years as of the date of application.

Further, the applicant was interviewed only once in connection with his application for adjustment from temporary to permanent resident status. Pursuant to 8 C.F.R. § 245a.3(b)(4)(iii)(A)(1), the applicant should have been given a second opportunity (a second interview) to demonstrate that he met the English and civics requirement.

Upon a *de novo* review of all of the evidence in the record, the AAO finds that the applicant is eligible for a waiver of the English and civics requirement. Therefore, the applicant is eligible for permanent residence in the legalization program. Consequently, the applicant has overcome the basis for denial cited by the director.

The appeal will be sustained. The director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.