U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: Los Angeles Date: MAR 13 2007

WAC-96-146-50758

IN RE: Applicant: [redacted]

APPLICATION: Application for Adjustment 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: 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 resident status to permanent resident status was denied by the District Director, Los Angeles. It is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant purportedly failed to report for scheduled interviews, and failed to demonstrate a knowledge of United States history and government and a minimal understanding of ordinary English.

On appeal, the applicant states that she does not recollect being scheduled for an interview on June 29, 1996. She also states that she did not appear for the October 9, 2003 interview due to medical reasons.

The regulation at 8 C.F.R. § 245a.3(e) states in pertinent part:

> Each applicant shall be interviewed by an immigration officer, except that the adjudicative interview must be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant.

The required interview was originally scheduled for June 29, 1996. The applicant failed to appear, and the interview was rescheduled for August 21, 1996. The record clearly shows the applicant did appear. The director erred in stating that the applicant was not interviewed. The director also incorrectly stated that the applicant was granted temporary residence on May 4, 1988. The approval took place on May 13, 1994. This date is significant, as it means the application for adjustment to permanent residence, received on April 22, 1996, was timely filed by the applicant within the requisite 43-month period.

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 applicant did appear for the permanent residence interview on August 21, 1996, and failed the history, government and English language test on that date. The applicant was scheduled for another opportunity to pass the test on October 5, 1999, pursuant to 8 C.F.R. 245a.3(b)(4)(iii)(B), but she failed to report. Another notice dated September 15, 2003 was mailed to the applicant, advising her of an interview on September 25, 2003. That date was crossed out, and October 9, 2003 was written in. Another note on the notice states "Reschedule – Oct. 14, 2003." The applicant was not interviewed on these dates.

On appeal, the applicant states that she could not report on October 9, 2003 because of medical reasons. She submits an authorization form allowing the Department of Health Services, County of Los Angeles, to release medical records to her. However, she has not provided any records in this proceeding.

Also on appeal, the applicant shows her address as [redacted], and states that the director's denial notice was sent to the incorrect address of [redacted] She is correct in stating the address to which the director mailed the notice, but the applicant does not allege that she did not receive the notice. As she was able to file a timely appeal, there was no problem with service of the decision. Finally, [redacted] is the address the applicant earlier showed on her application.

It is noted that there is no indication in the record that the applicant ever wrote the director and asked for another interview date during the ten-year period from the time the applicant filed her application until it was denied.

While the director incorrectly stated that the applicant never appeared for an interview, the director's conclusion that the applicant did not demonstrate a knowledge of history and government and English language ability at a permanent residence interview is valid. Also, there is no evidence that the applicant has passed a standardized section 312 test. Thus, she has not shown that she meets the requirements of section 312 of the Act. Whether she, nevertheless, satisfactorily pursued a course of study must be ascertained.

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,
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> (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,
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> (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,
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> (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). Evidence of satisfactory pursuit may be submitted with the application, or, at the latest, at the time of the interview. *See* 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 she "satisfactorily pursued" a course of study recognized by the Attorney General. Therefore, the applicant has not shown that she meets the section 312 requirements **or** that she satisfactorily pursued an approved course.

The applicant has not shown that she meets the requirements concerning the English language and history and government of the United States. Therefore, she is ineligible for permanent residence in the legalization program.

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