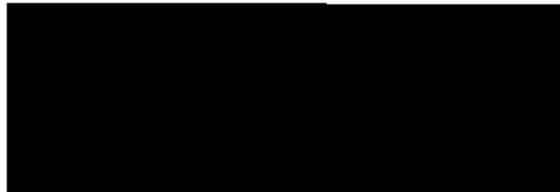


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS
2090 Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



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DATE: **AUG 13 2012**

Office: DENVER, CO

FILE: 

IN RE: Applicant: 

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary resident status to permanent resident status was denied by the Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant failed to demonstrate that he satisfied the basic citizenship skills requirement.

On appeal, the applicant asserts that he attended a course of study which would satisfy the citizenship requirement.

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 the application or the date of eligibility for permanent residence under this part, which 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 qualification 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.

It is noted that, the applicant appeared for a scheduled interview with United States Citizenship and Immigration Services (USCIS) on September 21, 2010. The applicant failed the citizenship exam. On June 23, 2011 the applicant appeared for a second interview and again failed the citizenship test, but demonstrated proficiency in literacy. At that time, the applicant did not submit proof that he completed 40 hours of instruction in English and US history and government in state recognized accredited learning institution. Based upon the above, the director denied the application on February 13, 2012.

An applicant can demonstrate that he meets the requirements of section 312(a) by "[s]peaking and understanding English during the course of the interview for permanent resident status" and answering questions based on the subject matter of approved citizenship training materials, or "[b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS)." 8 C.F.R. §§ 245a.3(b)(4)(iii)(A)(1) and (2).

On appeal, the applicant asserts that he satisfied the alternative "basic citizenship skills" requirement by satisfactorily pursuing a course of study recognized by the Attorney General. 8 C.F.R. § 245a.3(b)(4)(i)(B).

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). 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 submitted documentation from Right to Read dated July 7, 2010 indicating that he attended ESL classes for a total of 113 hours of classroom instruction. The applicant also submitted a Certificate of Participation from High Plains Library indicating that he completed 40 hours of instruction at a library citizenship class from January 12, 2010 until March 2, 2010¹ along with an undated Certificate of Completion from Christ Community Church indicating that the applicant completed a basic level ESL class.

The AAO has reviewed, *de novo*, the evidence submitted in support of the applicant's eligibility. The AAO finds that the evidence that the applicant is "satisfactorily pursuing" was not submitted until after the second interview. As such, the applicant has not demonstrated that he "satisfactorily pursued" a course of study recognized by the Attorney General. Therefore, the applicant has not

¹ The file contains a cover letter from the High Plains Library stating that the applicant attended classes from January 12, 2011 to March 9, 2011.

shown that he meets the section 312 requirements or that he satisfactorily pursued an approved course.

However, the record shows that the applicant was born [REDACTED], and that his Form I-698 application was filed on January 4, 2010. Therefore, the applicant was 51 years old at the time of filing. Thus, the requirements of paragraph (b)(4)(i) of this section may be waived without formal application for the applicant because he was over 50 years old at the time of filing provided that he can establish that he has resided in the United States for at least 20 years.

The AAO has reviewed the file in its entirety and finds that the applicant has not submitted sufficient evidence of the 20 year requirement. While the record of proceedings does contain income tax return documents for the years 1980 through 1992, there is no evidence in the record that the tax returns after 1983 were ever filed. The record does contain evidence that the applicant applied for tax amnesty in 1984 along with tax returns and W-2 record of taxable earnings for the years 1984 through 1992. The record also contains tax return documents along with W-2 records for the years 2003 and 2004. Thus, the requisite 20 year time period has not been established.

Beyond the decision of the director, the alien is ineligible for legalization benefits because he has been convicted of a felony. The record contains the final court disposition from Weld County, Colorado indicating that the applicant was arrested on January 1, 2006 and subsequently pled guilty to violating Colorado 18-5-113(1)(d) *Criminal Impersonation*, a Class 6 felony. (Case no. [REDACTED]).

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 210.3(d)(3).

“Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

“Misdemeanor” means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The applicant’s fingerprint record also indicates that he was arrested in Los Angeles, California on November 8, 1980 charged with Robbery. It is unclear from the record whether this arrest resulted in a conviction, however, the applicant bears the burden of establishing his admissibility.

The applicant has not shown that he meets the requirements concerning the English language and history and government of the United States or that he is otherwise exempt from such requirements due to a physical or mental disability. Furthermore, the applicant is ineligible for legalization benefits due to his criminal history. Therefore, the applicant is ineligible for permanent residence in the legalization program.

[REDACTED]

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ORDER: The appeal is dismissed.