U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

L2

FILE: [redacted] Office: HOUSTON Date: MAR 21 2007

XPS 92 098 0300

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:

[redacted]

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, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The 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 did, in fact, pass her English test. Counsel asserts that the applicant was not given a chance to take her English exam again after the notice of intent to deny was issued.

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).

The record reveals that the applicant appeared for her first adjustment interview on September 30, 1996. She failed the English and United States history and government test.

The applicant appeared for her second adjustment interview on February 18, 1997. The interviewing officer's notes indicate that the applicant once again failed the English and United States history and government tests.

On January 11, 2005, the applicant was sent a notice of intent to deny the Form I-698 because she had failed to demonstrate her understanding of English and knowledge of the history and government of the United States. Counsel for the applicant, in response, asserted that the applicant could converse in English as well as in Spanish. Counsel requested that the applicant be given another chance to take the English test. Counsel further asserted that the applicant took an English course and submitted a certificate of completion to the Immigration and Naturalization Service, now Citizenship and Immigration Services, in January 1997. Counsel stated that he would submit another copy of the certificate within two weeks.

The district director denied the application for adjustment of status from temporary to permanent residence on March 22, 2005, because the applicant failed to demonstrate minimal understanding of English and knowledge and understanding of the history and government of the United States.

On appeal, counsel for the applicant asserts that the applicant "has submitted all requirements related to her English exam." Counsel states that the applicant was not given another opportunity to take her English and United States history and government exams after the issuance of the notice of intent to deny on January 11, 2005. Counsel submits an affidavit from the applicant in

which she states she is attaching a copy of the record that she received from the English class she took in 1996 and that she is ready and willing to take "any exam to test my knowledge of English and US history."

Although counsel indicated, in response to the notice of intent to deny, that he would submit a copy of the certificate of completion from the applicant's English class, and the applicant indicated on appeal that she was submitting a copy of her certificate of completion, neither counsel nor the applicant has ever submitted such a certificate to establish that the applicant has satisfied the English and knowledge of United States history and government requirement.

Counsel asserts that the applicant should have been given opportunity to take the English and U.S. history and government tests after the issuance of the notice of intent to deny. An applicant who fails to pass 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, submit evidence of passing a INS approved section 312 standardized examination or submit evidence that the alien is satisfactorily pursuing an approved course of study from a designated school. The applicant was given two opportunities to pass the English literacy and U.S. history and government tests, but she failed to do so. She also failed to submit a certificate from an approved school to establish that she was satisfactorily pursuing a course in English and United States history and government at an approved school.

Counsel's statements on appeal have been considered. However, the fact remains that the applicant is ineligible for adjustment of status from temporary to permanent resident because she failed to demonstrate minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States. Nor has she established that she 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 district director's decision to deny the adjustment application will be affirmed and the appeal will be dismissed.

It is noted that the applicant was arrested in Walton County, Florida, on September 28, 1989, and charged with possession of cocaine in violation of FL 893.13, a felony. On October 23, 1989, the State Attorney, Circuit Court of Walton County, Florida, declined prosecution in this case. [redacted]

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