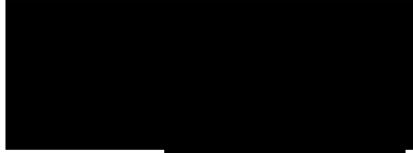


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U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE:

SRC-94-242-50474

Office: HOUSTON

Date:

OCT 25 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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 Director, Houston District Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant appeared for interviews on two occasions, was given the opportunity to demonstrate his understanding of English and his knowledge and understanding of the history and government of the United States, and was unable to do so.

On appeal, the applicant indicated through his representative that he was not given a second test of his understanding of English and that he successfully completed a course of study recognized by the Attorney General. The applicant also indicated the course instructor, who is now deceased, mailed the certificate to Citizenship and Immigration Services (CIS), formerly the Immigration and Naturalization Service, prior to September 21, 1998.

Due to a misdirection of mail, the Form I-694 Notice of Appeal of Decision was not placed in the record of proceedings, and the director erroneously terminated the applicant's temporary resident status. The director rescinded the notice of termination of temporary resident status and certified the Form I-694 appeal to the AAO for its consideration.

Any applicant who has been lawfully admitted for temporary resident status may apply for adjustment of status if the applicant (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). An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview shall be afforded a second opportunity after six months. 8 C.F.R. § 245a.3(b)(4)(iii)

The record indicates the applicant appeared for an interview with an immigration officer on September 21, 1998 and on May 23, 2005. During each interview, the applicant was given the opportunity to demonstrate his understanding of English and his knowledge and understanding of the history and government of the United States. The record includes test pages signed by the applicant and the immigration officer on September 21, 1998 and May 23, 2005. Both test pages indicate the applicant was unable to pass the test.

In denying the application, the director noted that the applicant failed to respond to the reasons for denial listed in the Notice of Intent to Deny. Specifically, the applicant failed to demonstrate his understanding of English and knowledge of history and government of the United States. As a result, the director found the applicant ineligible to adjust to permanent resident status.

On appeal, the applicant indicated through his representative that he was not given a second test of his understanding of English and that he successfully completed a course of study recognized by the Attorney General. The applicant also indicated the course instructor, who is now deceased, mailed the certificate to CIS prior to September 21, 1998. It is noted that the record contains no evidence that the applicant successfully completed a recognized course of study.

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 section 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 section 245a.1(s)(1) and (4) of this chapter; or a high school diploma or general educational development diploma (GED) under section 245a.1(s)(2) of this chapter; or certification on letterhead stationery from a state recognized, accredited learning institution under section 245a.1(s)(3) of this chapter; or evidence of having passed the IRCA Test for Permanent Residency under section 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 he "satisfactorily pursued" a course of study recognized by the Attorney General. Therefore, the applicant has not shown either that he meets the section 312 requirements or that he satisfactorily pursued an approved course.

The applicant has not shown that he meets the requirements concerning the English language and history and government of the United States. Therefore, he is ineligible for adjustment from temporary to permanent resident status.

Since the director rescinded the decision to terminate temporary resident status, the case will be remanded for issuance of the Notice of Termination of Temporary Resident Status.

ORDER: The appeal is dismissed, and the case is remanded for further action consistent with this decision. This decision constitutes a final notice of ineligibility.