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



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
XPN-90-123-00030

Office: CHICAGO

Date: SEP 26 2008

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:



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, Chicago District Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

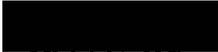
The director denied the application because the applicant appeared for interviews on two occasions, was given the opportunity to demonstrate his understanding of English and his knowledge and understanding of the history and government of the United States, and was unable to do so.

On appeal, counsel for the applicant states that the applicant was not advised to pursue the required course of study to achieve an understanding of English and there is no indication that such a course exists. Counsel also states that there is no regulatory limit to the number of times the applicant can take the citizenship skills examination.

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 August 26, 1999 and May 1, 2000. The director's decision indicated that the applicant was unable to demonstrate his understanding of English and his knowledge and understanding of the history and government of the United States at either interview. However, the record appears to indicate that the applicant demonstrated his understanding of English and his knowledge and understanding of the history and government of the United States at the second interview, on May 1, 2000. The immigration officer did not note the applicant's exam score on the test paper. However, the applicant provided correct answers to six out of 10 questions on the History/Civics Exam, and provided four correct answers to questions that he was not required to answer. The applicant also appears to have passed the writing test portion of the examination by transcribing a sentence read aloud by the officer. Therefore, the applicant is found to have demonstrated his understanding of English and his knowledge and understanding of the history and government of the United States.



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The applicant has demonstrated that he meets the requirements concerning the English language and history and government of the United States. 8 C.F.R. § 245a.3(b)(4)(i). Therefore, he is eligible for adjustment from temporary to permanent resident status.

ORDER: The appeal is sustained. The director shall complete the adjudication of the Form I-698.