



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC-07-215-11763

Office: CHICAGO

Date: **DEC 07 2009**

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:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary resident status to permanent resident status was denied by the Director, Chicago, Illinois 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, and that he was not eligible for a waiver of the requirement. The director also noted that the applicant failed to demonstrate that he would not be a public charge.

On appeal, the applicant asserts that he is eligible for a waiver of the basic citizenship skills requirement as an individual over the age of 50 years, who has resided in the United States for at least 20 years.

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.

The record shows that the applicant was born on January 3, 1950, and that his Form I-698 application was filed on May 2, 2007. Therefore, the applicant does not fall within the criteria described at 8 C.F.R. §§ 245a.3(b)(4)(ii)(A), (B), or (C) based on his age at the time he filed his application.

It is noted that, the applicant appeared for a scheduled interview with United States Citizenship and Immigration Services (USCIS) on November 7, 2007. At the interview, the applicant failed to demonstrate basic understanding of history and government of the United States. He also failed to demonstrate English language proficiency. On November 17, 2008, the applicant appeared for a second interview and again failed to demonstrate proficiency in English and/or civics. At that interview, counsel for the applicant indicated that the applicant was eligible for a waiver of the requirement pursuant to 8 C.F.R. 245a.(b)(4)(B)(ii). This requirement states that the requirements shall be waived for applicants over the age of 50 years who have been present in the United States for at least 20 years and who submit evidence establishing the 20 year qualification requirement.

The record of proceedings indicates that the applicant is a 59 year old Mexican citizen. Pursuant to 8 C.F.R. 245a.(b)(4)(B)(ii), the applicant must establish 20 years of residency in the United States as of the date of application or the date of eligibility for permanent residence, whichever is later. Therefore, the applicant was required to submit evidence of his residency as of May 2, 1987.

In support of his residency for the required period, the applicant submits the following:

- Two letters from La Hacienda Brands Inc. The first, signed by [REDACTED] dated November 5, 2007, indicates that the applicant has been a customer of the business since January 1981. The second letter, signed by [REDACTED] dated June 17, 1994 indicates that the applicant has been a client of the business since May 1989. The inconsistency has not been explained by the applicant.
- A letter from [REDACTED] who indicates that the applicant has been a client of the affiant since 1983. The letter is dated June 1994.
- A letter from [REDACTED] of St. Stanslaus Kostka Church who indicates that the applicant is an active member of the parish. Father Bus also indicates that the applicant has been living in the United States for the past 31 years. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the

organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letter from St. Stanislaus Kostka Church fails to state the address where the applicant resided during the entire membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and indicate that membership records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letter is not deemed probative. Furthermore, in a second letter from the Parish, Father Bus indicates that the applicant attended the Parish only from January 1, 1981 until November 1982. This inconsistency has not been explained.

- A letter signed by [REDACTED] of Ann Sather Restaurant, who indicates that the applicant worked for the restaurant from 1989 until 1991. This letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by Mr. [REDACTED] does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the stated period.
- Checks dated in 1989, 1990, 1993, 1996, 1997 and 2006.
- W-2 issued by National Castings Inc. dated 1998;
- Photocopies of income tax returns for fiscal years 1998, 2002, 2003, 2004, 2006 and 2007.
- An Illinois identification card issued on March 14, 2008;
- An employment identification page issued on November 2, 2006;

The AAO has also reviewed the affidavits submitted by family members and friends to establish that the applicant has met the 20 year residency requirement. We agree with the director's conclusion that the affidavits carry little probative weight. These affidavits fail to establish the applicant's continuous residence in the United States for the period May 2, 1987 until May 2, 2007. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements or employment letters provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged.

Thus, the applicant has failed to demonstrate that he is eligible for a waiver of 8 C.F.R. 245a.(b)(4)(B)(ii). 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 20 year residency. Therefore, the applicant is ineligible for permanent residence in the legalization program on this basis.

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 not submitted a 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. The only evidence submitted includes a photocopy of bulletin from St. Gall Catholic Church with the name David Bustamante handwritten on the top. There is no indication from the letter that it related to an English course, or that it relates to the applicant. 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 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 or that he is otherwise exempt from such requirements due to 20 year residency. Therefore, the applicant is ineligible for permanent residence in the legalization program.

The next issue to be examined in this proceeding is whether the applicant has established that he is admissible to the United States under the provisions of section 245A of the Act as required by 8 C.F.R. § 245a.2(d)(5).

Section 212(a)(4) of the Act states in pertinent part that any alien who: "is likely at any time to become a public charge is inadmissible." The factors to be taken into account in determining whether an alien is inadmissible under section 212(a)(4) of the Act include the alien's age, health, family status, assets, resources, financial status, education and skill, as well as whether any affidavit of support under section 213A of the Act has been submitted on the alien's behalf. Section 212(a)(4)(B) of the Act.

Further, 8 C.F.R. § 245a.2(d)(4) requires applicants for temporary residence under section 245A of the Act to submit proof of financial responsibility in order to determine whether an applicant is likely to become a public charge. Generally, the evidence of employment submitted by an applicant pursuant to 8 C.F.R. § 245a.2(d)(3)(i) will serve to demonstrate the applicant's financial responsibility during the documented period(s) of employment. If the applicant's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the applicant may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is determined likely to become a public charge and is unable to overcome this determination after application of the special rule will be denied adjustment. Pursuant to 8 C.F.R. § 245a.2(d)(4), the burden of proof to demonstrate the inapplicability of the ground of inadmissibility arising under section 212(a)(4) of the Act lies with the applicant who may provide:

- (i) Evidence of a history of employment (i.e., employment letter, W - 2 Forms, income tax returns, etc.);
- (ii) Evidence that he/she is self-supporting (i.e., bank statements, stocks, other assets, etc.); or
- (iii) Form I-134, Affidavit of Support, completed by a spouse in behalf of the applicant and/or children of the applicant or a parent in behalf of children which guarantees complete or partial financial support. Acceptance of the affidavit of support shall be extended to other family members where family circumstances warrant.

The record contains no evidence to demonstrate the applicant's level of education or that he possesses any particular skill. The applicant claimed that he was a self-employed fruit seller from November 1989 through at least March 5, 2001 at part #36 of the Form I-687 application. Although the record does not contain any evidence establishing the applicant ever received public assistance of any kind, he failed to submit any documentation such as tax returns or bank statements to corroborate his claim of employment and demonstrate his means of economic support.

On appeal, the applicant submits a Form I-864 affidavit of support from a family member, [REDACTED] guaranteeing complete or partial financial support. Mr. [REDACTED] also submits W-2's indicating household income of \$50,000. Therefore, the portion of the director's decision relating to public charge has been overcome by the applicant on appeal. However, the applicant's admissibility is moot as he has failed to establish his eligibility for the reasons described above.



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