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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

L1

FILE:

MSC-07-080-11313

Office: FORT SMITH

Date: FEB 05 2009

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "J. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Field Office Director, Fort Smith, Arkansas, and is now before the Administrative Appeals Office on appeal. This matter will be remanded to the director for further action and consideration.

The director denied the application because the applicant had failed to establish that he satisfied the “basic citizenship skills” required under section 245A(b)(1)(D) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(b)(1)(D).

On appeal, the applicant asserts that during his interview he was very nervous and did not understand English very well. The applicant states that he has been enrolled in an adult education center and is currently enrolled at the Community Jones Center. The applicant states that he does not understand the reason he was given a second English examination.

Under section 245A(b)(1)(D) of the Act (“Basic Citizenship Skills”), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General [now the Secretary of Homeland Security (Secretary)]) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 245A(b)(1)(D) of the Act, the Secretary may waive all or part of the requirements for aliens who are at least 65 years of age or developmentally disabled.

The regulation at 8 C.F.R. § 245a.3(b)(4)(iii)(B) states that:

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 6 months (or earlier at the request of the applicant) to pass the tests, submit evidence of passing an INS approved section 312 standard examination or submit evidence of fulfillment of any one of the “satisfactorily pursuing” alternatives listed at § 245a.1(s) of this chapter. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements. An applicant whose period of eligibility expires prior to the end of the six-month re-test period, shall still be accorded the entire six months within which to be re-tested.

The record reflects that the applicant was interviewed twice for English literacy and knowledge of United States history and government. The applicant was interviewed on November 21, 2007, and again on April 30, 2008. On both occasions, the applicant failed to demonstrate a minimal understanding of ordinary English and knowledge of civics and history of the United States. The director denied his application to adjust status to permanent resident on this basis.

Pursuant to the above cited regulation, the director's decision to deny the application was in error because the applicant was re-tested prior to the expiration of the six month re-test period. As stated, 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 6 months to pass the tests, or submit evidence of passing an INS approved section 312 standard examination, or submit evidence of fulfillment of any one of the "satisfactorily pursuing" alternatives. 8 C.F.R. § 245a.3(b)(4)(iii)(B). Here, the applicant's re-test period was only after the duration of five months and nine days (November 21, 2007 to April 30, 2008).

Since the director failed to adhere to the regulatory requirements for English literacy and the United States history and government tests, his decision was in error and is withdrawn. The matter shall be remanded and the file returned to the director to allow the applicant another opportunity to pass the tests, or submit evidence of passing an INS approved section 312 standard examination, or submit evidence of fulfillment of any one of the "satisfactorily pursuing" alternatives.

According to a report based upon the applicant's fingerprints, the Arkansas State Police arrested him on February 6, 2006 and charged him with a DWI and speeding. The director shall request that the applicant provide the final disposition of these charges to the USCIS.

ORDER: The matter is remanded for further action and consideration pursuant to the above.