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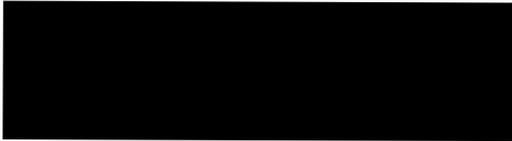
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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JUN 25 2009

FILE: [REDACTED]
XPS-92 135 0054

Office: TEXAS SERVICE CENTER Date:

IN RE: Applicant: [REDACTED]

APPLICATION: Application to Adjust Status 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:



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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application to adjust to permanent resident status pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a was denied by the Director of the Texas Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had failed to establish that she satisfied the “basic citizenship skills” required under 8 C.F.R. § 245a.3(b)(4).

On appeal, applicant submits evidence of enrollment in an English as a Second Language course at Houston Community College.

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 June 5, 1960, and that her Form I-698 application was filed on October 13, 1992. 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 her age at the time she filed her application. Counsel indicates that the applicant "may have a physical or developmental disability that may allow her to qualify to waive the English language and history and government requirements." However, the applicant does not submit any evidence to support her assertion. Therefore, the applicant is not qualified for a discretionary waiver under 8 C. F. R. § 245a.1(v) on the basis of a developmental disability.

The applicant, who is neither 65 years old nor developmentally disabled, does not qualify for of the exception in section 245A(b)(1)(D)(ii) of the Act. Nor does she satisfy the "basic citizenship skills" requirement of section 245A(b)(1)(D)(i) of the Act because she does not meet the requirements of section 312(a) of the Act. An applicant can demonstrate that she meets the requirements of section 312(a) by "[s]peaking and understanding English during the course of the interview for permanent resident status" and answering questions based on the subject matter of approved citizenship training materials, or "[b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS)." 8 C.F.R. §§ 245a.3(b)(4)(iii)(A)(1) and (2).

Pursuant to 8 C.F.R. § 245a.3(b)(4)(iii)(B), the applicant was interviewed twice in connection with her Form I-687 application, on July 27, 2005 and on April 10, 2006. On both occasions, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government.

The remaining question, therefore, is whether the applicant satisfies 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 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. On appeal, she submits a Certificate of Completion from Houston Community College indicating that she completed 48 contact hours in Communications Improvement. The certificate is dated October 11, 2007. The record reflects that the above evidence was submitted on October 20, 2007. The applicant did not submit the above evidence before or at her second interview. This requirement is a mandatory time frame and clearly stated in the regulations at 8 C.F.R. § 245a.3(b)(4)(iv). Therefore, the applicant has not shown that she meets the section 312 requirements **or** that she satisfactorily pursued an approved course within the required time frame.

The applicant has not shown that she meets the requirements concerning the English language and history and government of the United States or that she is otherwise exempt from such requirements due to a physical or mental disability. Therefore, the applicant is ineligible for permanent residence in the legalization program.

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