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U.S. Citizenship
and Immigration
Services

41

FILE:

XPS 90 223 00230

Office: TEXAS SERVICE CENTER Date:

MAR 27 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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment to permanent resident status was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office. The appeal will be dismissed.

The applicant submitted a Form I-698, Application to Adjust Status from Temporary to Permanent Resident Under Section 245 A of the Immigration and Nationality Act (INA). The director denied the application because the applicant failed to demonstrate knowledge of United States history and government and a minimal understanding of ordinary English. The record reflects he was interviewed and tested on May 23, 2005 and October 4, 2006.

On appeal, the applicant states:

I would like to ask for another opportunity to meet the pending requirement. For which I will take immediate action by taking the 40 hr class required.

A temporary resident who applies for adjustment of status shall demonstrate that he or she meets the requirements of section 312 of the INA (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or, can demonstrate he or she is satisfactorily pursuing a course of study recognized by United States Citizenship and Immigration Services (USCIS), to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States. 8 C.F.R. § 245a.3(b)(4)(i)(A) and (B).

Literacy and basic citizenship skills may be demonstrated 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. 8 C.F.R. § 245a.3(b)(4)(iii)(A)(1) and (2).

The record shows that the applicant failed written English language, history and government tests on May 23, 2005 and April 10, 2006.

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 8 C.F.R. § 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 Immigration Reform and Control Act (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 USCIS, 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 USCIS.

To satisfy the English language and basic citizenship skills requirements under the "satisfactorily pursuing" standard as defined at 8 C.F.R. § 245a.1(s), the applicant must submit evidence of such satisfactory pursuit in the form of a Form I-699, Certificate of Satisfactory Pursuit, issued by the designated school or program official attesting to the applicant's satisfactory pursuit of the course of study as defined at 8 C.F.R. § 245a.1(s) (1) and (4); or a high school diploma or general educational development diploma (GED) under 8 C.F.R. § 245a.1(s)(2); or certification on letterhead stationery from a state recognized, accredited learning institution under 8 C.F.R. § 245a.1(s)(3); or evidence of having passed the IRCA Test for Permanent Residency under 8 C.F.R. § 245a.1(s)(5). 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. 8 C.F.R. § 245a.3(b)(4)(iv).

On appeal, the applicant states that he intends to take "the 40 hr class required." However, he 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 was "satisfactorily pursuing" a course of study recognized by the USCIS.

Accordingly, as the applicant has not shown that he meets the section 312 requirements or that he was satisfactorily pursuing an approved course, he is ineligible for permanent residence in the legalization program.

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