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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 and Immigration Services

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[redacted]

FILE: [redacted] Office: FORT SMITH Date: DEC 10 2010

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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have 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.

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant was granted temporary resident status on November 11, 2006 under section 245A of the Act, as amended, 8 U.S.C. § 1255a. On June 15, 2008, the applicant filed a Form I-698, Application to Adjust Status from Temporary to Permanent Resident under Section 245A of the Act. The director denied the application, finding the applicant failed to demonstrate sufficient knowledge of the history and form of government of the United States as required under Section 245A(b)(1)(D)(i) of the Act.

On appeal, counsel asserts that the applicant has been enrolled in ESL and U.S. Citizenship (Civics) Preparation classes since January of 2008. Counsel requests that the applicant be granted permanent residency on appeal.

Under Section 245A(b)(1)(D)(i) of the Act, regarding 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 Immigration and Nationality 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 [Secretary of Homeland Security]) 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)(ii) of the Act, the requirements shall be waived without formal application for persons who, as of the date of the application or the date of eligibility for permanent residence are 65 years of age or who are developmentally disabled. *See* 8 C.F.R. § 245a.3(b)(4)(ii).

The applicant, who is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 245A(b)(1)(D)(ii) of the Act. Nor does he satisfy the "basic citizenship skills" requirement of section 245A(b)(1)(D)(i) of the Act because he does not meet the requirements of section 312(a) of the Act. An applicant may establish that he or she has met the requirements of section 312(a) of the Act by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. 8 C.F.R. §§ 312.1 – 312.3.

An applicant may also establish that he or she has met the requirements of section 245A(b)(1)(D)(i) of the Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. 8 C.F.R. § 245a.3(b)(4)(iv). The high school or GED diploma may be submitted at the time of filing the Form I-698 application, subsequent to filing the application but prior to the interview, or at the time of the interview. *Id.*

Finally, an applicant may also establish that he or she has met the requirements of section 245A(b)(1)(D)(ii) of the Act by submitting Form I-699, Certificate of Satisfactory Pursuit, issued by a designated school or program official attesting to the applicant's satisfactory pursuit of the course of study as defined at § 245a.1(s)(1) and (4). The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing Form I-698, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A-number must appear on any such evidence submitted). 8 C.F.R. § 245a.3(b)(4)(iv).

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial interview shall be afforded a second opportunity after six months (or earlier at the request of the applicant) to pass the required tests or to submit the evidence described above. 8 C.F.R. § 245a.3(b)(4)(iii)(B).

The record reflects that the applicant was interviewed twice in connection with his I-698 application, on November 19, 2008, and again on August 25, 2009. On both occasions, the applicant failed to demonstrate a knowledge of the history and form of government of the United States. The applicant does not dispute this fact on appeal. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 245a.3(b)(4)(iii)(A)(2). The applicant does not have a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.3(b)(4)(iv).

In a April 13, 2010, Notice of Decision, the director denied the instant application based on the applicant's failure to demonstrate knowledge of the history and form of government of the United States. On appeal, counsel asserts that the applicant has attended civics classes since January 2008. Counsel states that the applicant has accumulated a total of 61 hours. Counsel contends that the applicant failed to submit evidence, but verbally informed the officer of his attendance. Counsel submits four verification of attendance letters from Northwest Technical Institute, Adult Education Center. Collectively, the letters indicate that the applicant has attended citizenship classes since January 2008 and has accumulated over 57 hours. All of the letters are dated after the applicant's second interview on August 25, 2009. The record does not reflect that the applicant submitted any evidence of his attendance prior to or at his second interview. This requirement is a mandatory time frame and clearly stated in the regulation at 8 C.F.R. § 245a.3(b)(4)(iv). Thus, the applicant has failed to satisfy the basic citizenship skills requirement.

Based on the above discussion, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in Section 245A(b)(1)(D)(i) of the Act. Accordingly, the AAO affirms the director's decision that the applicant is ineligible for adjustment from temporary to permanent resident status under section 245A of the Act.

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