

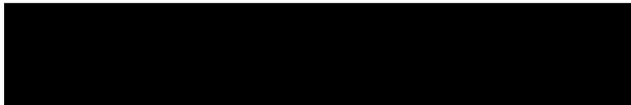
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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FEB 14 2011

FILE: [REDACTED] Office: DETROIT 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:

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.

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, as amended, 8 U.S.C. § 1255a, was denied by the director of the Detroit office and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had failed to establish that he satisfied the "basic citizenship skills" required under 8 C.F.R. § 245a.3(b)(4).

On appeal, the applicant asserts that he meets the requirements of section 312 of the Immigration and Nationality Act (the Act) relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States. The applicant submits evidence that he is registered to take an English as a Second Language (ESL) class. In addition, the applicant states that he was not provided two opportunities to demonstrate that he satisfied the basic citizenship skills requirement. In the alternative, the applicant asserts that he should be given a third opportunity to demonstrate that he satisfies the basic citizenship skills requirement.

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 of application or the date of eligibility for permanent residence under this part, whichever 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 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 May 20, 1963, and that his Form 1-698 application was filed on April 6, 2009. 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. The applicant has not submitted any evidence that would qualify him 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 the exception 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 can demonstrate that he meets the requirements of section 312(a) by " [speaking 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 his application, on November 5, 2009 and August 2, 2010. On both occasions, the applicant failed to demonstrate a minimal knowledge of United States history and government and adequate proficiency in the English language.

Further, the applicant cites no statute or regulation that compels the director to schedule the applicant for a third interview. The regulation only provides *one* opportunity after the failure of the first test. 8 C.F.R. § 245a.17(b).

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 § 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 § 245a.1(s) (1) and (4) of this chapter; or a high school diploma or general educational development diploma (GED) under § 245a.1(s)(2) of this chapter; or

certification on letterhead stationery from a state recognized, accredited learning institution under § 245a.1(s)(3) of this chapter; or evidence of having passed the IRCA Test for Permanent Residency under § 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. On appeal, he submits a letter from a representative of the Hispanic Center of Western Michigan dated August 16, 2010, stating that the applicant is registered to take an ESL class beginning on October 9, 2010 and ending on January 22, 2011. The applicant did not submit the above evidence before or at the time of his 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).

The record reveals that on June 26, 1997, the applicant was charged with one count of violating 8 U.S.C. § 1835(A)(3), *Attempting to Enter the United States by Using a Counterfeit Non-Immigrant Visa*. On June 27, 1997, the applicant was convicted of the charge, and was sentenced to 6 months probation and a fine and assessment totaling \$1265. (United States District Court for the Northern District of Georgia, Clayton County, case number [REDACTED])¹

Accordingly, on June 27, 1997, the applicant was ordered expeditiously removed from the United States as being inadmissible, for having procured or attempted to procure a visa or other documentation by fraud, or by willfully misrepresenting a material fact, at the time the applicant sought admission to the United States on June 26, 1997, and for being an immigrant not in possession of a valid entry document. See Sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act). The record states that the applicant was expeditiously removed from the United States on July 27, 1997.

Upon a *de novo* review of all of the evidence in the record, the AAO finds that the applicant has not shown that he has met the section 312 requirements or that he satisfies the English language and basic citizenship skills requirements under the “satisfactorily pursuing” standard as defined at 8 C.F.R. § 245a.1(s). Therefore, the appeal will be dismissed.

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

¹ While a single misdemeanor conviction does not render an applicant ineligible for permanent resident status in the legalization program, the noted conviction renders the applicant inadmissible pursuant to 212(a)(6)(C)(i) of the Act. Furthermore, the record contains a Form I-690, application for waiver of grounds of inadmissibility which was approved on September 10, 2007; however, the waiver does not reference the fraud/misrepresentation grounds of inadmissibility.