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



U.S. Citizenship
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Office: TEXAS SERVICE CENTER

File:

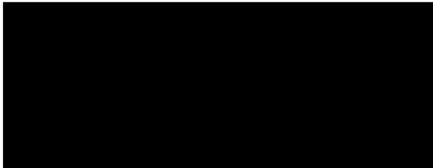


IN RE: Applicant:



APPLICATION: Application for Status as a Temporary Resident 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Texas Service Center, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant's Form I-698 Application to Adjust from Temporary to Permanent Resident Status was denied on February 26, 2010. The director notes that pursuant to 245A(b)(2) of the Act, an alien's temporary resident status shall be terminated when the Form I-698 has been denied.

On appeal, the applicant asserts that his Form I-698 was improperly denied. He indicates that he satisfied the English/Civics requirement by completing at least 40 hours of instruction in English and United States civics.

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 February 24, 1960 and that his Form I-698 application was filed on October 12, 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.

However, the AAO has conducted a *de novo* review of the entire file, specifically the procedural history. The AAO notes the following:

The applicant's Form I-687 Application for Temporary Resident Status was approved on November 8, 2005. On March 18, 2008, the applicant appeared for a scheduled interview with United States Citizenship and Immigration Services (USCIS). The applicant was unable to pass the English portion of the section 312 requirements and was issued a Request for Evidence (RFE). The RFE instructs the applicant to ". . . submit the requested information at your next interview . . . You will be scheduled for a second interview to be tested on English proficiency and US history and government in six months."

On October 8, 2009, the applicant submitted evidence in response to the RFE. Four days later, on October 12, 2009, the applicant filed a second Form I-698 [REDACTED]. In connection with this second filing, the applicant attended the requisite biometrics appointment but has not yet been interviewed.

On February 26, 2010, the original Form I-698 [REDACTED] was denied. The director noted that the reason for denial was the applicant's failure to respond to the RFE issued at his March 18, 2008 interview with USCIS. The record contains notes from the Field Office indicating that the applicant was unable to speak any English on October 20, 2010. Therefore, the AAO finds that the applicant was afforded two interviews, on March 18, 2008 and on October 20, 2010 and was unable to meet the Section 312 requirements at either interview.

Therefore, the issue becomes whether the applicant can demonstrate an alternate means of meeting the Section 312 requirements. An applicant can demonstrate that he meets the requirements of section

¹ The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if the alien fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date he/she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv). The second Form I-698 application was filed more than 43 months after the applicant's Form I-687 Application for Temporary Resident Status was approved. Therefore, the AAO finds that this application is not timely filed.

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).

On appeal, the applicant asserts that he has satisfied 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. The applicant submitted a copy of a fax from San Jacinto Adult Learning Center, along with a data sheet and certificate of completion, indicating that the applicant attended classes from August 17, 2006 until December 7, 2006. The applicant also submitted a letter from El Paso Community College indicating that the applicant attended GED classes during the summer of 2008. None of the evidence submitted, however, substantiates the applicant's claim that he attended at least 40 hours of instruction in English and U.S. history and government. As such, the applicant has not demonstrated that he "satisfactorily pursued" a course of study recognized by the Attorney General.

Therefore, the applicant has not shown that he meets the section 312 requirements **or** that he satisfactorily pursued an approved course.

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

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