

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

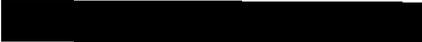


L,

DATE: JUL 28 2012

OFFICE: HOUSTON

FILE: 

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:



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 director of the Houston office denied the applicant for adjustment from temporary resident status to permanent resident status. The decision is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the appeal will be sustained.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.

On May 4, 2005, the applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). On September 12, 2005, the application was approved. On May 10, 2007, the applicant submitted a Form I-698, Application to Adjust Status from Temporary to Permanent Resident. On March 22, 2012, the director denied the application, finding the applicant failed to demonstrate his understanding of the English language and his knowledge and understanding of the history and government of the United States. The director subsequently terminated the applicant's temporary resident status pursuant to 8 C.F.R. § 245a.2(u). The AAO will consider the applicant's claim *de novo*, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).¹

It is noted that in response to the director's Notice of Intent to Deny, counsel asserted that the applicant satisfied the requirements under the regulation at 8 C.F.R. § 245a.3(b)(4)(ii)(C). However, the director determined that the applicant was not yet 50 years of age as of the date of his eligibility. The director incorrectly stated the applicant's date of eligibility as May 1, 2007. The applicant's correct date of eligibility was April 11, 2009, 43 months after his Form I-687 approval on September 12, 2005. This portion of the director's decision will be withdrawn. The record reflects that the applicant's date of birth is June 21, 1959. Given this, the applicant was 49 years of age as of the date of eligibility, two months prior to turning 50 years of age. On appeal, counsel did not contest the director's findings or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005).

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 (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

¹ The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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).

The record reflects that the applicant was interviewed twice on July 29, 2010, and again on February 8, 2011. On both occasions, the applicant failed to demonstrate an understanding of the English language and knowledge of the history and government of the United States. The applicant does not dispute this fact on appeal.

On appeal, counsel asserts that the director erred and failed to realize that the applicant met the basic citizenship skills requirements under 245A(b)(1)(D)(I)(II)&(III). Counsel asserts that the applicant “completed 47 hours of an ESL I course at the [REDACTED] and received a Certificate of Completion on July 21, 2007 for successfully completing ESL II, the course which establishes that the requirements under Section 312 were being met.” Based on this, counsel contends that the applicant should have been considered to have satisfied the requirements.

The director’s conclusion that the applicant did not demonstrate a knowledge of history and government and English language ability at a permanent residence interview is valid. There is no evidence that the applicant has passed a standardized section 312 test. Thus, he has not shown that he meets the requirements of section 312 of the Act. Whether he, nevertheless, satisfactorily pursued a course of study must be ascertained.

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 record fails to contain a Form I-699; however, the record does contain copies of three Certificates of Completion from ██████████ College in the applicant's name. The record reflects that the applicant submitted these documents with his Form I-698, long before his interviews. The certificates indicate that the applicant completed a total of 47 hours in Special Topics in Communication, ESL I on May 25, 2002, and 48 hours in Communications Improvement II/ ESL II on July 21, 2007. The certificates establish that the applicant attended a

recognized course of study for at least 40 hours of a minimum of 60 hour course.² Given this, the evidence complies with either the regulations under 8 C.F.R. § 245a.3(b)(4)(iv) or the basic citizenship skills requirement under the “satisfactorily pursuing” standard as defined at 8 C.F.R. § 245a.1(s). In light of the above, the applicant has shown that he satisfactorily pursued an approved course.

The applicant has shown that he meets the requirements concerning the English language and history and government of the United States. Therefore, he is eligible for permanent residence in the legalization program. Accordingly, the director’s decision is withdrawn and the matter remanded for further adjudication.

ORDER: The director’s decision is withdrawn and the appeal is sustained.

² According to the Houston Community College website, all ESL course are 60 hours.