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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**



L1

[Redacted]

DATE: JUN 11 2012

OFFICE: ATLANTA

[Redacted]

IN RE: Applicant:

[Redacted]

APPLICATION: Application for Adjustment 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. 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 if your case was remanded for further action, you will be contacted.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for adjustment from temporary resident status to permanent resident status was denied by the Atlanta Field Office Director. It is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded.

The director denied the application, finding the applicant twice failed to demonstrate a minimal understanding of ordinary English.

On appeal, the applicant asserts through counsel that he is developmentally disabled and therefore exempt from the basic citizenship skills requirement and submits evidence in support of his assertion.

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 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 applicant appeared for the permanent residence interview on January 8, 2010, and failed the English language test on that date. The applicant was given another opportunity to demonstrate these competencies on April 12, 2010 pursuant to 8 C.F.R. § 245a.3(b)(4)(iii)(B), and again failed the English language test. The director found the applicant ineligible to adjust status from temporary to permanent resident, and denied the Form I-698 application.

On appeal, counsel submits a psychological evaluation of the applicant indicating a “significant cognitive impairment.”

The regulation at 8 C.F.R. § 245a.3(b)(4)(ii)(D) provides that the English and civics requirements shall be waived without formal application for persons who, as of the date of application or the date of eligibility for permanent residence, whichever is later, are developmentally disabled as defined at 8 C.F.R. § 245a.1(v), which defines developmental disability as a severe, chronic disability of a person which:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language,

- (iii) learning, (iv) mobility, (v) self direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
- (5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

A person who claims exemption from the English and civics requirements on the grounds of developmental disability must submit medical evidence of his or her developmental disability. 8 C.F.R. § 245a.3(b)(4)(ii)(D)

It is noted that on the Form I-693 Medical Examination of Aliens Seeking Adjustment of Status the physician who examined the applicant on December 17, 2009 indicated no physical or mental disorders. The psychological evaluation submitted on appeal indicates the applicant's functional limitations, but does not state that the applicant's disability manifested before age 22, reflect the applicant's need for special, interdisciplinary or generic care or treatment, or that the functional limitations are the result of mental and/or physical impairments. The applicant has not established that he is developmentally disabled as defined in the regulation.

Nonetheless, the matter will be remanded to permit the director to schedule another interview to permit the applicant to establish he meets the English requirements. In the instant matter, the director failed to permit six months to lapse before scheduling the second interview, as required by the regulation at 8 C.F.R. § 245A.3(B)(iii)(B).

Beyond the director's decision, the AAO notes that the record indicates that the applicant has one misdemeanor conviction. On March 23, 2005, the applicant was arrested and charged with the misdemeanor offense of *theft by receiving and/or retaining stolen property having a value of less than \$500* in violation of Georgia Stat. Ann § 16-8-7. He pled guilty to the offense and was convicted on May 19, 2005. Hall County State Court of Georgia Case No. [REDACTED] One misdemeanor conviction does not render the applicant ineligible for adjustment from temporary to permanent resident status.

**ORDER:** The matter is remanded. If the director's decision is adverse to the applicant, he shall certify his decision to the AAO.