

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



41

Date:

OCT 03 2012

Office: HOUSTON

FILE:



IN RE:

Applicant:



APPLICATION:

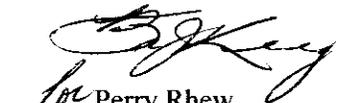
Application for Adjustment from Temporary to Permanent Resident Status pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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.


for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary resident status to permanent resident status was denied by the Director of the Houston office. It is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding the applicant failed to demonstrate he satisfied the English and civics requirements of the Immigration and Nationality Act (Act).

On appeal, counsel for the applicant asserts that the applicant satisfied the English requirements and should be allowed to retake the civics test in Spanish.

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 July 19, 2010, and failed the history, government and English language test on that date. The applicant was given another opportunity to demonstrate these competencies on February 8, 2011 pursuant to 8 C.F.R. § 245a.3(b)(4)(iii)(B), and again failed the history, government and the written 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 for the applicant cites the regulation at 8 C.F.R. § 312.2(c) for the proposition that if an applicant has satisfied the English requirement but the officer determines that an inaccurate or incomplete record of examination would result if the test were conducted in English, in such a case the examination may be conducted in the applicant's native language.

Counsel asks the AAO to remand the matter to permit the applicant to retake the civics test in his native language.

However, the applicant has not satisfied the English requirements, so he is not eligible to take the civics test in his native language. The applicant was tested twice and ultimately failed the written portion of the English test. The applicant submitted several certificates to show he met the requirements of the Act.

The applicant provided the Service with a Certificate of Completion dated May 16, 2003, for the course ' [REDACTED] '. The certificate indicates the applicant

satisfactorily completed 4.8 credit hours. The applicant also submitted a Certificate of Completion awarded on November 11, 2007 for satisfactory completion of "[REDACTED]" a course of 48 contact hours (4.8 credit hours). The applicant submitted a certificate issued by The [REDACTED] for the successful completion of an [REDACTED] course on May 28, 2004.

The applicant failed to establish whether these courses were the equivalent of an academic year and whether the curriculum included at least 40 hours of instruction in English and United States history and government. Therefore, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 312 of the Act. There is no waiver available, even for humanitarian reasons, for a failure to comply with the "basic citizenship skills" requirement. The applicant is ineligible for adjustment to permanent resident status under section 245A(b)(1) of the Act on this basis.

The applicant has not shown that he meets the requirements concerning the English language and history and government of the United States. Therefore, he is ineligible for permanent residence in the legalization program.

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