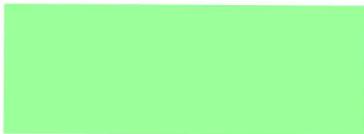




**U.S. Citizenship
and Immigration
Services**

(b)(6)



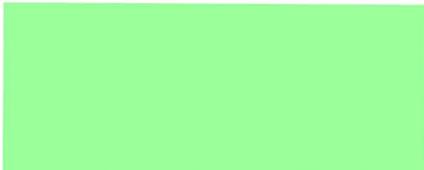
Date: **FEB 05 2019** Office: HOUSTON

File: 

IN RE: Applicant: 

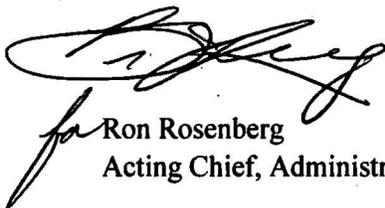
APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status in the legalization program was denied by the Houston Field Office Director, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.¹

The director denied the Form I-698 adjustment application because the applicant's temporary resident status had been terminated, and the applicant was therefore not eligible for adjustment to permanent resident status. The director further determined that the applicant failed to establish he satisfied the English and civics requirements of the Act.

On appeal, counsel for the applicant asserts that the director erroneously denied the applicant's Form I-698 application for adjustment from temporary to permanent resident status, because the applicant had established that he satisfied the English and civics requirements of the Act.

An alien whose temporary resident status has been terminated under 8 C.F.R. § 245a.2(u) is ineligible for adjustment from temporary to permanent resident status. 8 C.F.R. § 245a.3(c)(5). The applicant was granted temporary resident status on August 26, 2005. He timely filed a Form I-698 application for adjustment from temporary to permanent resident status. The director terminated the applicant's temporary resident status and denied the applicant's Form I-698 application in two separate decisions on May 7, 2012.

According to evidence in the record, the applicant passed the English reading and writing tests on January 25, 2010, but failed the English speaking and civics/history tests. The applicant was given two opportunities to establish his English skills and knowledge of U.S. history and civics, first on January 25, 2010 and again on August 16, 2010.

The applicant asserts that he satisfied the English and civics requirements through a combination of his completion of English and civics courses. Counsel asserts that the applicant was given only one opportunity to test for his knowledge of civics, and therefore should be given a second opportunity. Evidence in the record shows that the interviewing officer started to test the applicant on his knowledge of civics on August 16, 2010, but that he stopped and made a notation to the effect that the applicant did not speak English and therefore could not demonstrate such knowledge.

Counsel for the applicant asserts that the applicant completed 18 hours of civics instruction and 120 hours of English as a Second Language and therefore has been satisfactorily pursuing a course of study, which meets the requirements of the Act.

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

¹ The applicant indicated he was appealing a decision dated May 7, 2012 on his Form I-687. However, the director and the applicant both addressed the basis for denial of the Form I-698 and not the Form I-687. Both the notice of termination and notice of denial were issued on May 7, 2012.

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. As such, the applicant has not demonstrated that he "satisfactorily pursued" a course of study recognized by the Attorney General.

(b)(6)

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. Therefore, he is ineligible for permanent residence in the legalization program.

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