

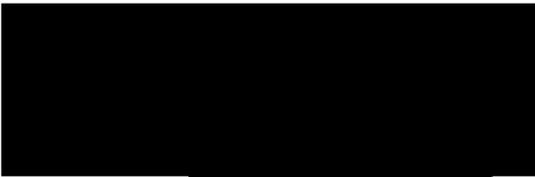
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U.S. Citizenship
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Services

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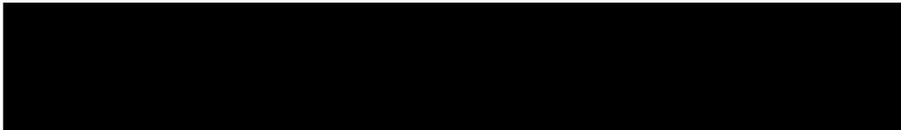
[Redacted]
SRC-96-024-51871

Office: Texas Service Center

Date: APR 12 2007

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.

A very faint, illegible signature or stamp.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status in the legalization program was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate the required knowledge of United States history and government and a minimal understanding of the English language. On appeal, counsel stated that the applicant would pursue a course of study recognized by the Attorney General. He has now provided letters from two learning institutions.

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).

There is no evidence that the applicant passed a standardized section 312 test. The director accorded the applicant the opportunity to comply with the history, government and English language requirements through examination at the time of interview. The record reveals that the applicant, when interviewed for permanent residence on August 3, 2005, failed the section 312 examination relating to knowledge of history and government and a minimal understanding of English. The applicant was given a final opportunity to pass the examination on April 10, 2006, pursuant to 8 C.F.R. § 245a.3(b)(4)(iii)(B), but she again failed to pass. No provision exists in the regulations to allow for another attempt to pass the examination at a permanent residence interview. Thus, the applicant has not shown that she meets the requirements of section 312 of the Act.

On her application, the applicant indicated that she would satisfactorily pursue a course of study recognized by the Attorney General. 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 at the time of filing the application for adjustment to permanent resident status, subsequent to filing but prior to the interview, or at the time of the interview. *See* 8 C.F.R. § 245a.3(b)(i)(4)(iv). The applicant did not provide any of the aforementioned documents through the time of her second interview on April 10, 2006. Thus, she failed to meet the requirement of submission of evidence no later than the date of interview. The application was denied on May 9, 2006, and the appeal was filed on June 9, 2006.

Later, with his letter dated July 6, 2006, counsel provided an unsigned letter dated June 29, 2006, not on letterhead stationery, purportedly from Houston Community College - Alief Center. Not only was the letter submitted too late

to be considered, but it explained that the applicant would only be able to begin a course at another campus on July 5, 2006. Thus, it is clear that the applicant had not yet “satisfactorily pursued” a course at that institution.

Subsequently, counsel provided two letters from [REDACTED] both dated August 4, 2006. The Administrative Assistant at [REDACTED] stated that the applicant “has been enrolled” in a U.S. history class. No information was provided as to when the applicant began that class. Furthermore, due to its untimely submission, the letter cannot be accepted as evidence of meeting the basis citizenship skills requirement. Finally, it is not clear that the learning center is a state recognized, accredited learning institution or was otherwise certified by the district director or the Director of the Outreach Program.

The applicant has not shown that she meets the section 312 requirements or that she satisfactorily pursued an approved course within the required period. As such, she is ineligible for permanent residence within the legalization program on this basis.

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