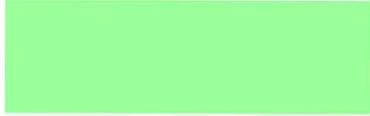




U.S. Citizenship
and Immigration
Services

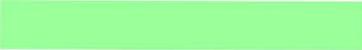
(b)(6)



DATE: **NOV 10 2014**

OFFICE: NEWARK

FILE: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over a circular stamp or mark.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary resident status to permanent resident status was denied by the Field Office Director (Director) in Newark, New Jersey. The application is now on appeal before the Chief, Administrative Appeals Office (AAO). The Director's decision will be withdrawn and the case remanded for further consideration and a new decision.

The Director denied the application based on a determination that the applicant twice failed to demonstrate that she satisfied the basic citizenship skills requirement at section 245A(b)(1)(D) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(b)(1)(D). The Director referenced the applicant's two examinations with U.S. Citizenship and Immigration Services (USCIS) officers on April 22, 2010 and April 11, 2013, in which she failed to demonstrate a minimal knowledge and understanding of the history and government of the United States. The Director stated that the applicant was not eligible for a waiver under the Act because the record indicated she was under 65 years of age and not developmentally disabled. Nor was there any evidence that the applicant was taking a course of study to overcome her shortcomings in basic citizenship skills.

On appeal the applicant asserts that she failed the U.S. history and government part of her basic citizenship skills examination on April 11, 2013 because she could not understand the accent of the USCIS officer who administered the exam. The applicant states that she started a course on English as a second language in September 2013 and would now be able to understand questions on U.S. government and history and answer them correctly.

Any alien who has been lawfully admitted for temporary resident status under section 245A of the Act¹ may apply for adjustment of status if the alien can demonstrate that he or she (I) meets the requirements of section 312 of the Act (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); **or**, (II) 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 section 245A(b)(1)(D)(i) of the Act; 8 C.F.R. § 245a.3(b)(4)(i).

Under section 245A(b)(1)(D)(ii) of the Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled.

The corresponding regulation governing waivers to the basic citizenship skills requirement for applicants seeking to adjust from temporary to permanent resident status is at 8 C.F.R. § 245a.3(b)(4)(ii). It states the following:

The requirements of paragraph (b)(4)(i) of this section must be met by each applicant. However, these requirements shall be waived without formal application for persons who,

¹ The applicant was approved for temporary resident status on May 19, 2006.

as of the date of application or the date of eligibility for permanent residence under this part, whichever date is later, are:

- (A) Under 16 years of age; or
- (B) 65 years of age or older; or
- (C) Over 50 years of age who have resided in the United States at least 20 years and submit evidence establishing the 20-year qualification requirement. Such evidence must be submitted pursuant to the requirement contained in Section 245a.2(d)(3) of this chapter; or
- (D) Developmentally disabled as defined at § 245a.1(v) of this chapter. Such persons must submit medical evidence concerning their developmental disability; or
- (E) Physically unable to comply. The physical disability must be of a nature which renders the applicant unable to acquire the four language skills of speaking, understanding, reading, and writing English in accordance with the criteria and precedence established in OI 312.1(a)(2)(iii) (Interpretations). Such persons must submit medical evidence concerning their physical disability.

Thus, the regulation expands upon the waivers set forth in the Act.

The record shows that the applicant was born on June [REDACTED] and that her application to adjust status from temporary to permanent resident (Form I-698) was filed on October 6, 2009. Thus, the applicant does not satisfy the age criteria described at 8 C.F.R. §§ 245a.3(b)(4)(ii)(A) or (B). Nor does the applicant claim to fit the health-related criteria described in 8 C.F.R. § 245a.3(b)(4)(ii)(D) and (E). However, the applicant was over 50 years of age – 57, to be exact – on the date her Form I-698 application was filed, and the previous approval of her Form I-687 application for temporary resident status was based on a finding that her continuous residence in the United States began before January 1, 1982 – more than 20 years before the filing of the Form I-698 application. Accordingly, it appears that the applicant qualifies for the basic citizenship skills waiver at 8 C.F.R. § 245a.3(b)(4)(ii)(C).

Therefore, the Director's decision of January 27, 2014, denying the application for adjustment to permanent resident status on the ground that the applicant failed to meet the basic citizenship skills requirement, will be withdrawn. The case will be remanded to the Director for further consideration of the application and the issuance of a new decision

ORDER: The Director's decision of January 27, 2014, is withdrawn. The case is remanded to the Director for further consideration of the applicant's eligibility to adjust status from temporary to permanent resident under section 245A of the Act. Upon completion of this review, the Director shall issue a new decision, which if is adverse to the applicant, he shall certify the decision to the AAO.