



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF J-S-L-

DATE: JAN. 15, 2016

APPEAL OF DETROIT FIELD OFFICE DECISION

APPLICATION: FORM I-698, APPLICATION TO ADJUST STATUS FROM TEMPORARY  
TO PERMANENT RESIDENT (UNDER SECTION 245A OF THE INA)

The Applicant, a native and citizen of Mexico, seeks to adjust status from temporary resident to lawful permanent resident. *See* Immigration and Nationality Act (the Act) § 245A, 8 U.S.C. § 1255(a). The Director, Detroit Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

In a decision dated June 6, 2013, the Director denied the Applicant's Form I-698, Application to Adjust Status from Temporary to Permanent Resident (under Section 245a of the INA), and terminated his temporary resident status. He found that the Applicant was ineligible to adjust status, as he did not report for interviews on April 5, 2012, and on February 27, 2013; in addition, the Applicant had twice failed the U.S. history and government test.

On appeal, the Applicant states that he did not receive the Director's appointment notices and the denial notice until he received these documents as a result of his request for his immigration records under the Freedom of Information Act. The Applicant asserts that apart from not receiving the scheduled appointment notices, even if the Applicant had received the notice of the appointment scheduled on April 5, 2012, he could not have reported on the scheduled date, because the appointment notice is dated March 21, 2013, and the appointment was set for an earlier date, April 5, 2012.

It is not clear from the record whether the Applicant notified the Director of a change in his address, and the record reflects that the appointment notices were returned as undeliverable. Therefore, the Director's denial of the application for this reason is withdrawn, and we deem the appeal timely filed.

The Director also denied the application because the record reflects that the Applicant did not demonstrate that he satisfied the basic citizenship skills requirement.

Applicants who have become temporary resident and are attempting to adjust to permanent resident status must fulfill requirements relating to a knowledge and understanding of English and U.S. history and government.

Pursuant to 8 C.F.R. § 245a.3(b)(4), any [foreign national] who has been lawfully admitted for temporary resident status may apply for adjustment of status if the [foreign national]:

(A) can demonstrate that he or she meets the requirements of section 312 of the Immigration and Nationality Act (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 [now Secretary of the Department of Homeland Security (Secretary)] to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

An applicant may demonstrate that these 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. 8 C.F.R. § 245a.3(b)(4)(iii)(A)(2). Under section 245A(b)(1)(D)(ii) of the Act, the Secretary may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled.

The pertinent regulation regarding individuals eligible for an exception to the basic citizenship skills requirement and those circumstances under which the Secretary could consider a waiver of such requirement is 8 C.F.R. § 245a.3(b)(4)(ii), which states:

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, 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. . . .; 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. . . . Such persons must submit medical evidence concerning their physical disability.

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The record shows that the Applicant was born in [REDACTED] and that he filed his Form I-698 application on May 28, 1996. Therefore, the Applicant does not fall within the criteria described at 8 C.F.R. §§ 245a.3(b)(4)(ii)(A), (B), or (C) based on his age at the time he filed his application or the date he became eligible for permanent resident status.

Moreover, as the Applicant has not established that he is developmentally disabled as a result of a physical or mental disability or impairment, he is not eligible for a discretionary waiver under 8 C. F. R. § 245a.3(b)(4)(ii)(D) or (E). The Applicant, who is neither 65 years old nor developmentally disabled, does not qualify for the exception in section 245A(b)(1)(D)(ii) of the Act.

The Applicant does he satisfy the “basic citizenship skills” requirement of section 245A(b)(1)(D)(i) of the Act because he does not meet the requirements of section 312(a) of the Act. Pursuant to 8 C.F.R. § 245a.3(b)(4)(iii)(B), the Applicant was interviewed twice in connection with his Form I-687 application, on March 9, 1996 and again on April 4, 2008. On both occasions, the Applicant did not demonstrate minimal knowledge of U.S. history and government.

The remaining question, therefore, is whether the Applicant satisfies the alternative “basic citizenship skills” requirement by satisfactorily pursuing a course of study recognized by the Secretary. 8 C.F.R. § 245a.3(b)(4)(i)(B).

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 § 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 [now U.S. Citizenship and Immigration Services (USCIS)], 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 [USCIS].

Pursuant to Section 8 C.F.R. § 245a.3(b)(4)(iv),

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 section 245a.1(s)(5) of this chapter.

Evidence of satisfactory pursuit may be submitted with the application, or, at the latest, at the time of the interview. *Id.*

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 Secretary. 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 knowledge and understanding of the history and government of the United States or that he is otherwise exempt

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from such requirements. Therefore, the Applicant is ineligible for permanent residence under the legalization program.<sup>1</sup>

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of J-S-L-*, ID# 14016 (AAO Jan. 15, 2016)

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<sup>1</sup> The Applicant also may be ineligible based on his inadmissibility for smuggling. The record includes a Form I-690, Application for Waiver of Grounds of Excludability Under Sections 245A or 210 of the Immigration and Nationality Act, dated August 28, 1998, which does not appear to have been adjudicated, and on which the Applicant stated he needs a waiver "for traveling outside of Mexico." The Form I-690 does not detail the duration of his absences. The record, however, indicates that on March 6, 1996, the Applicant was arrested for transporting two undocumented individuals, his brother and brother-in-law, from Mexico, thus making him inadmissible under section 212(a)(6)(E)(i) of the Act.