



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

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

MATTER OF F-H-T-

DATE: MAR. 29, 2016

APPEAL OF HOUSTON, TEXAS 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. § 1255a. The Director, Houston, Texas Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On July 28, 2015, the Director denied the Form I-698, Application to Adjust Status from Temporary to Permanent Resident, finding that the Applicant did not demonstrate the basic literacy and citizenship skills required for adjustment of status under section 245A of the Act.

On appeal, the Applicant asserts that he demonstrated that he is satisfactorily pursuing a course of study recognized by the Secretary of Homeland Security to achieve the required understanding of English and U.S. civics. In the alternative, he asserts that he is exempt from these requirements because of his age and years of residing in the United States.

An applicant who has been lawfully admitted for temporary resident status may apply for adjustment of status if the applicant can demonstrate that he or she meets basic literacy and citizenship skills (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or can demonstrate that he or she is satisfactorily pursuing a course of study recognized by the Secretary of Homeland Security to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States. Section 245A(b)(1)(D) of the Act, 8 U.S.C. § 1255a(b)(1)(D); 8 C.F.R. § 245a.3(b)(4)(i).

An applicant may demonstrate the basic literacy and citizenship skills requirement during the course of the permanent residence interview or by passing a standardized 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).

The record shows that the Applicant initially was interviewed in connection with his Form I-698 on May 13, 2014. The Applicant was tested on his ability to speak, read, and write English, and to

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answer basic questions about U.S. history and government. The Applicant did not pass the tests. An applicant who does not pass the English literacy or the U.S. history tests at the time of the interview must be afforded another opportunity to pass the tests or to submit evidence that he or she has otherwise fulfilled the literacy and citizenship skills requirement. 8 C.F.R. § 245a.3(b)(4)(iii)(B). The record does not show that the Applicant submitted evidence of compliance with the basic literacy and citizenship skills requirement following his interview on May 13, 2014. The Applicant was given another opportunity to demonstrate his basic literacy and citizenship skills on March 11, 2015, but again he was not able to speak, read, or write English, and he was not able to answer basic questions about the history and government of the United States.

However, section 245A(b)(1)(D)(ii) of the Act provides that all or part of the basic citizenship skills requirements may be waived for applicants who are at least 65 years of age or developmentally disabled. The regulations at 8 C.F.R. § 245a.3(b)(4)(ii) expand the waiver provision set forth in section 245A(b)(1)(D)(ii) of the Act. They provide:

The requirements . . . 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 for at least 20 years and submit evidence establishing the 20-year qualification requirement. Such evidence must be submitted pursuant to the requirements contained in § 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.

The record shows that the Applicant was born on [REDACTED] and that he filed his Form I-698 on September 8, 1995, after he became eligible for permanent resident status. Taking into account the latter of the two dates, we conclude that the Applicant was not yet 50 years old when he filed the application. In addition, the record does not include evidence to show that the Applicant was unable to comply with the basic citizenship skills requirements because of a developmental or physical

disability. Therefore, the Applicant does not fall within any of the waiver criteria described at 8 C.F.R. § 245a.3(b)(4)(ii).

The issue remaining concerns whether the Applicant established that he has satisfactorily pursued a course of study.

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 [now U.S. Citizenship and Immigration Services (USCIS)], as well as, State Departments of Education (SDEs)

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(and their accredited educational agencies) and Qualified Designated Entities in good-standing (QDEs) upon agreement with and authorization by [USCIS].

To satisfy the English language and basic citizenship skills requirements under the “satisfactorily pursuing” standard as defined above, an applicant must submit evidence of such satisfactory pursuit in the form of a Form I- 699, Certificate of Satisfactory Pursuit, issued by the designated school or program official attesting to the applicant’s satisfactory pursuit of the course of study; or a high school diploma or general educational development diploma (GED); or certification on letterhead stationery from a state recognized, accredited learning institution; or evidence of having passed the IRCA Test for Permanent Residency. 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. *Id.*

The Applicant has not submitted Form I-699, or a high school or GED diploma. The Applicant asserts, however, that he is satisfactorily pursuing a course of study of English and civics by attending a recognized program. To support his assertion, he provides documents from [REDACTED] and an entity called [REDACTED]

The [REDACTED] evidence consists of a letter dated April 20, 2015, signed by a teacher-supervisor, who states that the Applicant is enrolled in an English-as-a-Second Language course since April 11, 2015; that he attends classes; and that he has accrued 10 hours to date. The Applicant earlier had submitted documents reflecting his successful registration in the course after an assessment of his abilities in March 2015. The Applicant asserts on appeal that the course is intended to be completed in 84 hours. The [REDACTED] documents primarily reflect translated payment terms, including a contract and receipts. One sheet, titled “Summary Sheet,” concerns enrollment, a payment plan, and refers to study materials.

The Applicant’s evidence does not establish that either course includes the required U.S. history and government instruction or that they meet the minimum hour requirements. Moreover, as of the date of his appeal, the Applicant submitted no evidence showing he had completed at least 40 hours of instruction in English and U.S. history and government. In addition, the Applicant provides no proof of having attended, for one academic year, 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 of Homeland Security. Further, the Applicant did not submit the required Form I-699, evidence of satisfactory pursuit, by the date of his second interview, as required by 8 C.F.R. § 245a.3(b)(4)(iv). Therefore, the Applicant has not shown that he meets the section 312 requirements or that he satisfactorily pursued an approved course of study.

Accordingly, because the Applicant did not meet the basic literacy and citizenship skills requirement and did not establish eligibility for a waiver of this requirement, or satisfactory pursuit of a recognized course of study, the Director accurately set forth a legitimate basis for denial of the Applicant’s Form I-698.

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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. This decision constitutes a final notice of ineligibility.

ORDER: The appeal is dismissed.

Cite as *Matter of F-H-T-*, ID# 16654 (AAO Mar. 29, 2016)