



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

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

MATTER OF A-G-P-

DATE: SEPT. 13, 2016

APPEAL OF DALLAS, 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) section 245A, 8 U.S.C. § 1255a. Foreign nationals who have continuously resided in the United States since they were granted temporary resident status under section 245A of the Act may adjust to lawful permanent resident status, if they are admissible to the United States, have not been convicted of a felony or three or more misdemeanors in the United States, and can demonstrate basic citizenship skills.

The Field Office Director, Dallas, Texas, denied the application, concluding that the Applicant did not demonstrate the basic literacy and citizenship skills required for adjustment of status under section 245A of the Act.

The matter is now before us on appeal. In the appeal, the Applicant claims that he is currently pursuing a course of study recognized by the Secretary of Homeland Security, taking citizenship classes, and that he has been studying English for several years. The Applicant states that he has therefore satisfied the basic citizenship skills requirement.

We find that the Applicant is eligible for the basic citizenship skills waiver pursuant to 8 C.F.R. §245a.3(b)(4)(ii)(C). The Director's decision to dismiss the Form I-698 application will be withdrawn and the matter will be remanded for proceedings consistent with this decision.

I. LAW

The Applicant is seeking adjustment of status from temporary to permanent resident. Section 245A(b) of the Act provides:

- (1) Adjustment to permanent residence.-The [Secretary of Homeland Security] shall adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

....

(D) Basic citizenship skills.-

(i) In general.-The alien must demonstrate that he either-

(I) meets the requirements of section 312 (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 [Secretary]) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

The regulations at 8 C.F.R. § 245a.3(b) provide that a temporary resident may apply for adjustment of status to that of lawful permanent resident if he or she:

(2)(i)(A) Can demonstrate that the alien meets the requirements of section 312 of the Immigration and Nationality Act, as amended (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or

(B) Is satisfactorily pursuing a course of study recognized by the [Secretary] to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

The regulations at 8 C.F.R. § 245a.1(s) provides the following criteria for satisfactorily pursuing a course of study:

Satisfactorily pursuing, as used in section 245A(b)(1)(D)(i)(II) of the Act, 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, 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. Those SDEs and QDEs wishing to participate in this effort should write to the Director of the INS Outreach Program at 425 "I" Street, NW, Washington, DC 20536, for further information.

The regulations at 8 C.F.R. § 245a.3(b)(iv) provide that:

(iv) To satisfy the English language and basic citizenship skills requirements under the "satisfactorily pursuing" standard as defined at § 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 § 245a.1(s) (1) and(4) of this chapter; or a high school diploma or general educational development diploma (GED) under § 245a.1(s)(2) of this chapter; or certification on letterhead stationery from a state recognized, accredited learning institution under § 245a.1(s)(3) of this chapter; or evidence of having passed the IRCA Test for Permanent Residency under § 245a.1(s)(5) of this chapter. Such applicants shall not then be required to demonstrate that they meet the requirements of § 245a.3(b)(4)(i)(A) of this chapter in order to be granted lawful permanent residence provided they are otherwise eligible. Evidence of "Satisfactory Pursuit" may be submitted at the time of filing Form I-698, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A90M number must appear on any such evidence submitted). An applicant need not necessarily be enrolled in a recognized course of study at the time of application for permanent residency.

The regulation at 8 C.F.R. § 245a.3(b)(4)(ii) provides that:

(ii) 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:

...

(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 Section 245a.2(d)(3)¹ of this chapter[.]

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Applicant was granted temporary resident status in 2008. He applied to adjust his status from temporary to permanent resident in 2012. The record shows that the Applicant was interviewed in connection with his adjustment application in 2014. The Applicant was tested on his ability to speak and understand English and to 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

¹ The regulation at 8 CFR § 245a.2(d)(3) provides guidance on the type of evidence that may be submitted to establish proof of continuous residence in the United States during the requisite period.

submit evidence that he has otherwise fulfilled the literacy and citizenship skills requirement. 8 C.F.R. § 245a.3(b)(4)(iii)(B). The Applicant submitted a letter from the [REDACTED] showing that he was enrolled in an English as a Second Language (ESL) course from August 2005 until May 2006; however, the Director determined that the letter did not establish that the Applicant complied with the basic citizenship skills because it did not list the courses the Applicant had taken. The Applicant was administered the English and civics tests again in 2015, and again he was unable to demonstrate English literacy and basic knowledge of U.S. history and government. The Director then issued a notice of intent to deny (NOID) the application. The Applicant did not respond to the NOID.

III. ANALYSIS

The issues on appeal are whether the Applicant has submitted sufficient evidence to demonstrate that he either has a minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States, or can demonstrate that he is satisfactorily pursuing a course of study to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States as required by section 245A of the Act, or is eligible for a waiver pursuant to 8 C.F.R. §245a.3(b)(4)(ii)(C).

An applicant may demonstrate the basic literacy and citizenship skills requirement by speaking and understanding English 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).

In support of his application, the Applicant submitted documentation regarding attendance at an ESL course; however the documentation does not indicate the classes he took or whether the Applicant successfully completed the program's learning objectives. The record also reflects that after the issuance of the Director's decision, the Applicant enrolled in a U. S. citizenship preparation course that includes 21 hours of instruction. However, the course was not completed at the time that the appeal was filed, nor does it meet the requirement of completion of at least 40 hours of a minimum 60-hour course.

We find that the evidence that the Applicant submitted to show that he is "satisfactorily pursuing" a course of study is inadequate to demonstrate he meets this requirement. The Applicant has not submitted evidence to demonstrate that (i) he attended a recognized program for at least 40 hours of a minimum 60-hour course; (ii) he earned a high school diploma or general educational development diploma (GED) from a school in the United States or a GED in a language other than English that included a GED English proficiency test has been passed; (iii) he attended for a period of 1 academic year a state-recognized accredited learning institution in the United States whose curriculum included at least 40 hours of instruction in English and U.S. history and government; (iv) he attended courses conducted by employers, social, community, or private groups certified by the district director or the Director of the Outreach Program that included at least 40 hours of instruction in

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English and U.S. history and government; or (v) he completed at least 40 hours of individual study in English and U.S. history and government and passed the proficiency test for legalization, called the IRCA Test for Permanent Residency, indicating that he is able to read and understand minimal functional English within the context of the history and government of the United States.

However, 8 C.F.R. § 245a.3(b)(4)(ii) provides for a waiver of all or part of the literacy and citizenship skills requirements for applicants who are over 50 years of age and have resided in the United States at least 20 years. Here, the record reflects the Applicant is over 50 years of age² and has resided in the United States for at least 20 years. The record contains the following evidence to establish that the Applicant has lived in the United States at least 20 years:

- An employer letter stating that the Applicant was employed at a roofing company in [REDACTED] Texas from 1981 to 1991
- An employer letter stating that the Applicant was employed at a roofing company and a roofing company in [REDACTED] Texas from 1991 to 2003
- Tax documentation for the years 2002 through 2004
- School records reflecting the Applicant's attendance from August 2005 to May 2006
- Employment authorization documentation from 2002 to the present

Accordingly, the Applicant is eligible for the basic citizenship skills waiver pursuant to 8 C.F.R. §245a.3(b)(4)(ii)(C). Therefore, we will remand the matter to the Field Office Director, Dallas, Texas, to consider whether the Applicant satisfies the remaining eligibility criteria for adjustment of status from temporary to permanent resident under section 245A of the Act.

IV. CONCLUSION

As the Applicant is eligible for the basic citizenship skills waiver pursuant to 8 C.F.R. §245a.3(b)(4)(ii)(C), the Director's decision to dismiss the Form I-698 application will be withdrawn and the matter will be remanded for proceedings consistent with this decision.

ORDER: The decision of the Field Office Director, Dallas, Texas is withdrawn. The matter is remanded to the Field Office Director, Dallas, Texas for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of A-G-P-*, ID# 18572 (AAO Sept. 13, 2016)

² The record reflects that the Applicant was born in [REDACTED]