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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090

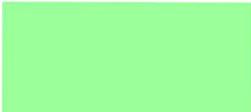


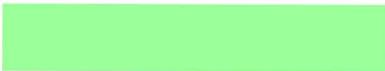
U.S. Citizenship
and Immigration
Services



Date: **JUN 11 2014**

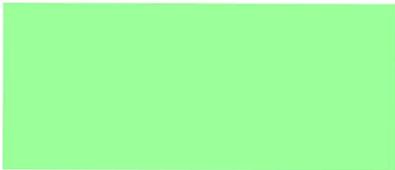
Office: HOUSTON

FILE: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:



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.

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The applicant filed an application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), which was approved. Subsequently, the Houston office director terminated the applicant's temporary resident status. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On June 20, 2011, the applicant submitted a Form I-698, Application to Adjust Status from Temporary to Permanent Resident. The director denied the Form I-698 due to the applicant's failure to demonstrate his understanding of the English language and his knowledge and understanding of the history and government of the United States. The applicant did not appeal this decision.

Subsequently, the director terminated the applicant's temporary resident status because the applicant's Form I-698 had been denied. The applicant filed the instant appeal.¹ The AAO will consider the applicant's claim *de novo*, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).²

Any alien who has been lawfully admitted for temporary resident status may apply for adjustment of status to a permanent resident 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).

The record reflects that the applicant was interviewed on October 1, 2012, and again on July 15, 2013. On both occasions, the applicant failed to demonstrate an understanding of the English language and knowledge of the history and government of the United States. The applicant does not dispute this fact on appeal.

¹ On the Form I-694 submitted on January 21, 2014, counsel checked the box indicating that the applicant waived the right to submit a written brief or statement in support of his appeal.

² The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Prior to his second interview, the applicant submitted a certificate issued by the [REDACTED] [REDACTED] indicating that he had participated in an English as a Second Language course in the fall of 2011. The certificate did not indicate the number of credit hours earned nor does it indicate whether the course covered United States government and history; therefore, it is insufficient.

On appeal, counsel asserts that the applicant was previously enrolled in courses in order to demonstrate his interest in learning English as a second language. Counsel contends that the lack of course names and hours on the previously submitted [REDACTED] enrollment verification letter was the school's fault, not the applicant's. Counsel states that the applicant is currently enrolled in a course to demonstrate his interest in learning English. Counsel submits an assessment report from [REDACTED] dated January 11, 2014, and a copy of the previously submitted enrollment verification letter from [REDACTED].

Based on the evidence in the record, the director's conclusion that the applicant did not demonstrate a knowledge of history and government and English language ability as of the time of his second interview is valid. There is no evidence that the applicant has passed a standardized section 312 test. Thus, he has not shown that he meets the requirements of section 312 of the Act. Whether he, nevertheless, satisfactorily pursued a course of study must be ascertained.

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,

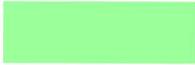
(4) An applicant has attended courses conducted by employers, social, community, or private groups certified (retroactively, if necessary, as long as enrollment occurred on or after May 1, 1987, and the curriculum included at least 40 hours of instruction in English and U.S. history and government) by 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 with the application, or, at the latest, at the time of the interview. See 8 C.F.R. § 245a.3(b)(4)(iv).

The record fails to contain a Form I-699; however, the record does contain a verification of enrollment letter from [REDACTED] dated September 9, 2013. The letter reflects that the applicant was enrolled in a Citizenship class starting on September 17, 2013. The record reflects that counsel submitted this document on September 11, 2013, in response to the director's Notice of Intent to Deny the applicant's Form I-698 application. The record also contains an assessment report from [REDACTED] dated January 11, 2014. The report reflects that the applicant's functioning level is Beginner ESL and it lists a class date, time and location. Neither document lists the course hours or whether the applicant completed the course. Both the letter and report fail to comply with the regulations under 8 C.F.R. § 245a.1(s) or the basic citizenship skills requirement under the "satisfactorily pursuing" standard as defined at 8 C.F.R. § 245a.1(s). Therefore, the applicant has failed to meet his burden.

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NON-PRECEDENT DECISION

The applicant's application to adjust from temporary to permanent resident status was denied. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. As the applicant has not overcome the basis for the termination of status, the appeal must be dismissed.

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