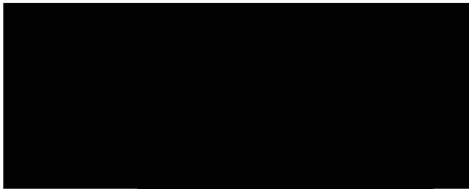


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U.S. Citizenship
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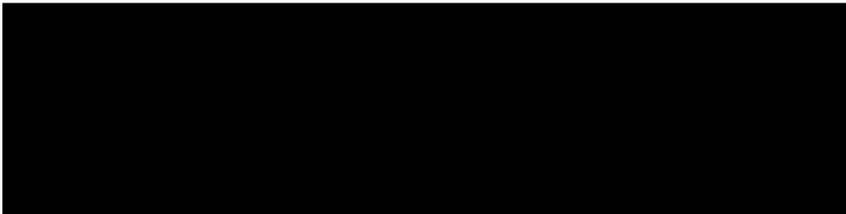
IN RE:

Applicant:



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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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), was denied by the District Director, New York. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director denied the application on the grounds that the applicant was absent from the United States for more than 180 days from July 1981 to August 1984, that the applicant does not appear to have filed or attempted to file a Form I-687 application for temporary resident status during the one-year registration period from May 5, 1987 to May 4, 1988, and that the evidence of record failed to establish the applicant's continuous residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

An applicant may also establish that he or she has met the requirements of section 312(a) of the Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2).

Finally, an applicant may establish that he or she has met the requirements of section 312(a) of the Act by providing evidence that he or she has attended or is attending a state recognized, accredited learning institution in the United States, following a course of study which spans one academic year and that includes 40 hours of instruction in English and United States history and government. The applicant may provide documentation of such on the letterhead stationary of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3).

The applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after 6 months: to pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit evidence that he or she has attended or is attending a state-recognized, accredited learning institution in the United States, following a course of study which spans an academic year and that includes 40 hours of instruction in English and United States history and government. *See* 8 C.F.R. § 245a.17(b).

The record shows that the applicant, a native of Colombia, filed her Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act on May 3, 2002.

On May 4, 2004, the applicant was interviewed in connection with her LIFE Act application. She failed to demonstrate a basic understanding of ordinary English and a basic knowledge of U.S. history and government during the examination portion of the interview.

On the same date, May 4, 2004, the district director issued a notice of intent to deny (NOID) in which she indicated that the applicant had failed the basic citizenship skills examination at her LIFE legalization interview. She notified the applicant that she would have a final re-examination on November 12, 2004, and indicated that if the applicant failed that examination or failed to appear for the second interview, her LIFE Act application would be denied.

At the second interview on November 12, 2004, the applicant again failed to demonstrate a basic understanding of ordinary English and a basic knowledge of U.S. history and government in her citizenship skills examination.

On March 24, 2005, the district director denied the application for LIFE legalization for the reasons stated in the NOID. In addition, the district director determined that the applicant was not eligible for temporary resident status under section 245A of the Immigration and Nationality Act (enacted as section 201 of the Immigration Reform and Control Act of 1986 – “IRCA”) as in effect before the enactment of section 1104 of the LIFE Act.

On appeal, the applicant asserts that she demonstrated a minimal understanding of the English language at her legalization interview, in that she was able to communicate with the interviewing officer and understood his instructions. The applicant requests clarification as to how the requirement of a “minimal understanding of the English language” is measured for the purposes of LIFE legalization.

To satisfy the English language requirement for LIFE legalization, an alien must demonstrate more than a minimal understanding of the interviewing officer’s instructions. The basic literacy requirement for aliens seeking legal permanent residence under the LIFE Act, like aliens applying for U.S. citizenship, is defined in section 312(a)(1) of the Immigration and Nationality Act as “an ability to read, write, and speak words in ordinary usage in the English language.” An alien’s ability to read, write, and speak the English language is measured in the Life Legalization Citizenship Test, which also includes a U.S. history and government component. The record includes the Life Legalization Citizenship Tests which the applicant took on May 4, 2004, and on November 12, 2004. The tests clearly show that the applicant failed to answer almost all of the U.S. history and government questions correctly, and that her ability to read and write English was poor. In accordance with the test results, the interviewing officer failed the applicant both times on “English ability” and “knowledge of U.S. history and government.”

The regulations state that to fulfill the LIFE Act requirements relating to basic citizenship skills an applicant may provide his or her high school diploma or GED from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2). The applicant has not provided a high school diploma or GED from a school in the United States. Nor has the applicant provided any evidence that she took, or is taking, a one-year course of study that includes the English language and U.S. government and history at a state recognized, accredited learning institution. *See* 8 C.F.R. § 245a.17(a)(3).

The applicant is not 65 years old or older and is not developmentally disabled. Therefore, she does not qualify for either of the exceptions listed in section 1104(c)(2)(E)(ii) of the LIFE Act.

For the reasons discussed above, the applicant has failed to demonstrate that she has met the basic citizenship skills requirement as described at 1104(c)(2)(E) of the LIFE Act. Accordingly, she is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act.

The applicant also asserts that she qualifies for temporary resident status under section 201 of IRCA because she filed a timely claim for class membership in a class action lawsuit [*League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (“*LULAC*”)] and provided evidence of her continuous residence in the United States in an unlawful status from before January 1, 1982 until May 4, 1988. The district director considered the application under this alternative provision of law in accordance with the regulation at 8 C.F.R. § 245a.6, which provides an alien who has not established eligibility for permanent resident status under section 1104 of the LIFE Act the opportunity to establish his or her eligibility for temporary resident status under IRCA, as it stood before enactment of the LIFE Act. As specified in 8 C.F.R. § 245a.6:

In such an adjudication . . . the district director will deem the “date of filing the application” to be the date the eligible alien establishes that he or she was “front-desked” or that, though he or she took concrete steps to apply, the front-desking policy was a substantial cause of his or her failure to apply. If the eligible alien has established eligibility for adjustment to temporary resident status, the LIFE Legalization application shall be deemed converted to an application for temporary residence

The record shows that the applicant submitted a Legalization Front-Desking Questionnaire, dated May 29, 2000, to the Vermont Service Center (VSC), which referenced *LULAC*. On January 28, 2002, the VSC director issued a letter to the applicant stating that the information she provided on the questionnaire failed to establish “your claim that you physically tendered a completed application with the appropriate fee to an INS [Immigration and Naturalization Service] or QDE [Qualified Designated Entity] office employee between May 5, 1987, and May 4, 1988, but had it rejected by that employee.” The one-year period referenced in the letter was the filing period to apply for temporary resident status under IRCA.

In view of this determination by the VSC director that the applicant was not “front-desked” between May 5, 1987, and May 4, 1988, and therefore could not be deemed to have filed an application for temporary protected status under IRCA [Form I-687] during the requisite one-year time period, the district director’s decision that the applicant was ineligible for temporary protected status under section 201 of IRCA was correct.

Based on the foregoing analysis, the AAO concludes that the applicant’s appeal must be dismissed because she has failed to establish her eligibility for permanent resident status under the LIFE Act or temporary resident status under IRCA.

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