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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

L2

[redacted]

FILE: [redacted] Office: NEWARK Date: JUL 3 1 2008

MSC 02 078 61673

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Newark, and is now before the Administrative Appeals Office (AAO) on appeal.[1] The appeal will be dismissed.

The director denied the application because the applicant had twice failed examinations meant to establish that the applicant had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act. The director also noted that the applicant failed to establish residency and presence in the United States for the requisite period.

On appeal, counsel submitted updated affidavits from several prior witnesses who attest to the applicant's entry and residence in the United States for the statutory period. Counsel also argues that the U.S. Citizenship and Immigration Services should exercise discretion to allow the applicant another opportunity to pass the basic citizenship skills examination.

Section 1104(c)(2)(B) of the LIFE Act states:

> (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. 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.12(e).

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding basic citizenship skills, an applicant for permanent resident status must demonstrate that he or she:

> (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or

[1] The decision of the AAO dated May 8, 2008 rejecting the appeal as untimely is hereby withdrawn. It is noted that, pursuant to 8 C.F.R. § 103.5(b), the AAO may *sua sponte* reopen and reconsider any adverse decision.

> (II) 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.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Secretary of Homeland Security may waive all or part of the above requirements for applicants who are at least 65 years of age or who are developmentally disabled. *See* 8 C.F.R. § 245a.17(c).

An applicant may establish that he or she has met the requirements of section 312(a) of the Immigration and Nationality Act (Act) by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 – 312.3.

An applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. 8 C.F.R. § 245a.17(a)(2).

Finally, an applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by establishing that:

> He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A-number must appear on any such evidence submitted).

8 C.F.R. § 245a.17(a)(3).

An 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 six months (or earlier at the request of the applicant) to pass the required tests or to submit the evidence described above. 8 C.F.R. § 245a.17(b).

The applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act on December 17, 2001. On November 5, 2002, the applicant was interviewed in connection with his LIFE Act application. He failed both the English literacy and the United States history and government tests. On May 2, 2003, the applicant was again interviewed in connection with his LIFE Act application. He failed to demonstrate a minimal understanding of ordinary English during the examination portion of the interview. On August 11, 2005, the applicant

was once more interviewed in connection with his LIFE Act application. The applicant successfully demonstrated knowledge and understanding of the history and government of the United States, but failed to demonstrate a minimal ability to write words in ordinary usage in the English language.

On August 12, 2005, the director issued the notice of intent to deny (NOID) in which she indicated that the applicant had failed the basic citizenship skills examination at all three of his LIFE interviews. She also noted that the applicant could not prove that he had been present in the United States from January 1, 1982 to May 4, 1988. The applicant was granted an additional 30 days to submit further evidence in support of his LIFE Act application.

On September 8, 2005 and in response to the NOID, the applicant submitted updated and amended affidavits from prior witnesses who attest to the applicant's entry and continuous unlawful residence in the United States for the requisite period. Specifically, the applicant submitted an updated and amended sworn statement from dated September 7, 2005, and a copy of his United States passport. , a naturalized citizen of the United States, attests to having known the applicant while both resided in Pakistan. The affiant claims that the applicant contacted him upon arriving in the United States in 1981 and also claims that the applicant resided with him at 38- . The AAO notes that this information confirms the address listed by the applicant on an earlier application for temporary residence (Form I-687) dated April 3, 1990. also provides specific factual detail regarding how he assisted the applicant in finding employment in November 1981, where the applicant remained employed until 1984. Additionally, the applicant submitted an updated and amended affidavit from , dated September 8, 2005. provides specific factual detail regarding the applicant's residence in the United States from 1985 to 1995. Furthermore, the applicant submitted a sworn statement from dated September 8, 2005, confirming that he met the applicant in 1981, and saw him regularly at his residence in Jackson Heights, New York, from 1984 to 1985. This address also corresponds with the address listed by the applicant for that period of time on the earlier Form I-687.

On October 12, 2005, the director denied the application based on the reasons set out in the NOID.
On appeal, counsel requests that the applicant be granted an additional opportunity to pass the basic citizenship skills examination, and submits additional copies of the amended affidavits discussed above. The AAO notes that the updated and amended affidavits consist of greater factual detail and provide more specific information regarding the circumstances of the affiants' relationship with the applicant. Contrary to the inferences drawn by the district director, the AAO concludes that the updated and amended affidavits submitted by the applicant in response to the NOID are relevant, probative, and credible, and corroborate his presence and residence in the United States for the relevant period.

However, the record verifies that the applicant was given multiple opportunities to demonstrate a working knowledge of fundamental English, and was unable to do so over a period of several years. The applicant also submitted a sworn affidavit wherein he admits that his ability to read and write ordinary English is minimal. Although the applicant has overcome one ground for denial listed in the district director's decision dated October 12, 2005, he has not established the requisite, basic citizenship skills.

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

The applicant has failed to demonstrate that he has met the basic citizenship skills requirement as described at 1104(c)(2)(E) of the LIFE Act. Thus, he is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act.

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