



U.S. Citizenship
and Immigration
Services

L2



FILE:



Office: Spokane, Washington

Date:

OCT 13 2004

IN RE: Applicant:



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:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the Spokane office. 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy**

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

The district director determined that the applicant failed in two interviews to demonstrate a proficiency in basic English and therefore failed to demonstrate the citizenship skills required to be eligible for permanent resident status under the LIFE Act. The district director also indicated that the applicant did not provide satisfactory documentation that he was enrolled in a qualifying course of study to acquire basic proficiency in English, as well as U.S. government and history, as an alternative means of meeting the citizenship skills requirement for LIFE legalization.

On appeal the applicant asserts that he has submitted documentation which meets his burden of proof, by a preponderance of the evidence, that he resided in the United States continuously and unlawfully during the requisite periods and satisfies the citizenship skills requirement for LIFE legalization.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (“CSS”), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (“LULAC”), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (“Zambrano”). See section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10. The record indicates that the applicant filed a timely claim for class membership.

An applicant for permanent resident status under section 1104 of the LIFE Act must also establish that he or she entered the United States before January 1, 1982 and resided in this country continuously in an unlawful status from before January 1, 1982 through May 4, 1988. See section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). In addition, the applicant must establish that he or she was continuously physically present in the United States from November 6, 1986 to May 4, 1988. See section 1104(c)(2)(C)(i) of the LIFE Act and 8 C.F.R. § 245a.11(c) and 16(b). The district director did not make any determination as to whether the applicant satisfied the statute’s U.S. residence and physical presence requirements. Thus, those issues are not currently before the AAO on appeal and the applicant’s arguments thereon will not be addressed in this decision.

An applicant for permanent resident status must also demonstrate, under section 1104(c)(2)(E)(i) of the LIFE Act (“Basic Citizenship Skills”), 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
- (II) 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.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled. The applicant is neither 65 years old nor developmentally disabled and thus does not qualify for either of those exceptions.

As further explained in the regulations, 8 C.F.R. § 245a.17(a) – Citizenship skills, an applicant can meet the requirements of section 312(a) by establishing that:

He or she has complied with the same requirements as those listed for naturalization applicants under §§ 312.1 and 312.2 of this chapter [8 C.F.R. § 245a.17(a)(1)]; or

He or she has a high school diploma or general education development diploma (GED) from a school in the United States. . . . [8 C.F.R. § 245a.17(a)(2)]; or

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 . . . [8 C.F.R. § 245a.17(a)(3)].

The regulations also give applicants the opportunity of a second interview. Thus, 8 C.F.R. § 245a.17(b) provides that:

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview shall be afforded a second opportunity after 6 months (or earlier, at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) and (a)(3) of this section. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

As provided in 8 C.F.R. § 245a.12(e), “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the *burden of proving 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 under the provisions of section 212(a) of the Act, and *is otherwise eligible for adjustment of status* under [section 1104 of the LIFE Act]. (Emphasis added.) The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.” As explained in *Matter of E-M-*, 20 I & N Dec. 77, 80 (Comm. 1989), “when something is to be established by a preponderance of the evidence it is sufficient that the proof only establish that it is probably true.” The decision went on to declare that, in the absence of contemporaneous documentation, affidavits are “relevant documents” which warrant consideration in legalization proceedings. *Id.* at 82-83. Preponderance of the evidence has also been defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979).

The record indicates that the applicant, who filed his LIFE application (Form I-485) in February 2002, does not have a high school diploma or a GED. At his first LIFE interview on February 25, 2003, the applicant elected not to attempt the English proficiency and U.S. government and history tests. A second interview was conducted on September 29, 2003, at which the applicant failed all three of his English writing samples. The district director issued a notice of intent to deny on October 6, 2003, to which the applicant responded on November 7, 2003 by asserting that he was currently enrolled in English language and U.S. history and government courses at Columbia Basin College in Pasco, Washington, which satisfied the requirements of 8 C.F.R. § 245a.17(a)(3). The applicant submitted a letter from the institution signed by the ESL instructor, dated November 6, 2003, certifying that the applicant had been “attending English as a Second Language (ESL) classes . . . since last spring quarter” and that he was “currently registered and attending our ESL, U.S. History and Civics (Government) based classes this quarter which offers a curriculum consisting of at least 40 hours of instruction. The classes are offered for 11 weeks each quarter . . .”

In his decision, issued on December 1, 2003, the district director indicated that the letter from Columbia Basin College did not state that the applicant's course of study was for one full academic year, as required by 8 C.F.R. § 245a.17(a)(3). In addition, the district director indicated that the applicant did not enroll in any course until after his first LIFE interview and did not submit any evidence thereof until after his second interview, which did not comport with the requirement of certifying his attendance in a qualifying course of study by the time of his first interview. Thus, the letter from Columbia Basin College was not timely submitted.

On appeal the applicant asserts that in early March 2003, immediately following his first interview, he enrolled and began attending classes at Columbia Basin College "consisting of at least 40 hours instruction in English (ESL), U.S. history and government." According to the applicant, his failure to produce evidence of his ongoing course of study at his second interview in September 2003 was an inadvertent oversight, and the district director should have accorded the subsequent letter from Columbia Basin College, submitted in response to the notice of intent to deny, proper evidentiary weight.

The AAO agrees with the district director that the letter from Columbia Basin College was not timely submitted, though not because the applicant failed to submit it at the time of his first interview. The regulations do not require that evidence of the applicant's attendance in a qualified course of study be submitted at the time of the first LIFE interview. 8 C.F.R. § 245a.17(b) specifically provides that "[a]n applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the [first] interview shall be afforded a second opportunity . . . to pass the tests *or submit evidence as described in paragraphs (a)(2) and (a)(3) of this section.*" (Emphasis added.) The evidence described in paragraph (a)(3) is an institution's written certification of the applicant's attendance in a qualified course of study. Thus, the applicant in this case could have submitted a letter from Columbia Basin College at his second interview. However, the regulation does not afford the applicant any opportunity to submit such a letter *after* his second interview. Under the regulation the applicant had a choice at his second interview – either "to pass the tests *or submit evidence as described in paragraph . . . (a)(3).*" (Emphasis added.) The regulation did not give the applicant the option of submitting "evidence as described in paragraph . . . (a)(3)" *after failing to pass the tests.*

In addition to being untimely submitted, the letter from Columbia Basin College fails to establish that the applicant's classes constitute a recognized course of study to learn basic English and basic U.S. history and government, as required by section 1104(c)(2)(E)(i)(II) of the LIFE Act. There is no Certificate of Attorney General Recognition (Form I-840) or similar documentation that the college qualifies as a state recognized, accredited learning institution. Moreover, the college's letter does not certify that either of the applicant's two courses was for a period of one academic year (or the equivalent thereof according to the standards of the learning institution), as required under 8 C.F.R. § 245a.17(a)(3). The letter simply states that the applicant had been attending ESL classes since the spring quarter of 2003 and that he was attending a one-quarter ESL/ U.S. government and civics course in the fall quarter of 2003. Thus, even if it had been timely submitted, the letter from Columbia Basin College does not establish that the applicant's course of study satisfies the requirements of 8 C.F.R. § 245a.17(a)(3).

Thus, the applicant does not satisfy the "basic citizenship skills" requirement of the LIFE Act because (1) he failed the "citizenship skills" test at his second interview and (2) even if he had skipped that "citizenship skills" test, his subsequent letter from Columbia Basin College was not timely submitted and did not meet the substantive requirements of certifying that the applicant was pursuing a qualified course of study at a state recognized, accredited learning institution, as set forth in section 1104(c)(2)(E)(i)(II) of the LIFE Act and 8 C.F.R. § 245a.17(a)(3).

For the reasons discussed above, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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