



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: Dallas, Texas

Date:

OCT 13 2002

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 Dallas District 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 Dallas, Texas. 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 his understanding of the fundamentals of English and knowledge of the history and government of the United States, as required to be eligible for permanent resident status under the LIFE Act.

On appeal counsel asserts that the applicant was not advised at either interview that he could satisfy the above requirement by enrolling in a course of study in a state recognized, accredited learning institution and submit evidence of such attendance. Counsel states that “[t]he applicant is enrolled in such course of study” and requests that the case “be remanded for consideration of the referenced evidence.”

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 in 1990 for class membership in CSS.

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.

Counsel asserts that the applicant was not informed at his first interview on February 7, 2003 or on the Form I-72 instruction sheet issued that day, or at his second interview on August 28, 2003, about the “option” in 8 C.F.R. § 245a.17(a)(3) of enrolling in a course of study and submitting evidence of his attendance in lieu of taking the “citizenship skills” examination. Counsel stated in the appeal, filed in December 2003, that the applicant was enrolled in such a course of study. The AAO notes, however, that the regulations do not charge Citizenship and Immigration Services (CIS), successor to the Immigration and Naturalization Service (INS), with any duty to inform applicants of the specific provisions of the “citizenship skills” regulations. The LIFE Act regulations are publicly available. Moreover, 8 C.F.R. § 245a.17(a)(3) specifically provides that an applicant must certify his or her attendance in a qualified course of study “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.” There is no evidence in the record that the applicant was enrolled in a qualified course of study at the time of his first interview in February 2003 or at the time of his second interview in August 2003, as the regulations require. Although counsel asserts that the applicant was enrolled in a course of study at the time of the appeal in December 2003, counsel did not indicate when the course began or submit any documentary evidence from the institution.

Thus, the applicant does not satisfy the “basic citizenship skills” requirement of the LIFE Act, set forth in section 1104(c)(2)(E)(i)(II) of the Act and 8 C.F.R. § 245a.17(a)(3), because he failed to pass the “citizenship skills” tests at either of his interviews or demonstrate by the time of his second interview that he was satisfactorily pursuing a qualified course of study to achieve the requisite understanding of English and knowledge of the history and government of the United States.

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).

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.