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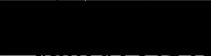


U.S. Citizenship
and Immigration
Services

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JAN 21 2005

FILE:  Office: HOUSTON Date:
MSC-04-146-19153

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:


INSTRUCTIONS:
This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The director denied the application because the applicant failed to demonstrate that he met 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).

On appeal, the applicant through counsel asserts that the statute gives him the option of meeting the educational requirements by demonstrating that he is attending a recognized course of study. The applicant argues:

My application was [sic] denied even though it is not yet possible for me to exercise that option. The CIS district director is responsible for recognizing courses in this area. Because he has not yet recognized a course, the denial of my application is premature and violates the provisions of the LIFE Act.

Counsel requested an extension of 45 days in which to submit a brief and /or evidence to the AAO. To date, however, no brief and/or evidence has been presented by either counsel or the applicant.

The regulation at 8 C.F.R. § 245a.17 requires that applicants must meet the requirements of section 312(a) of the 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). The applicant must establish that:

- (1) He or she has complied with the same requirements as those listed for naturalization applicants...
- (2) He or she has a high school diploma or general educational development diploma (GED) from a school in the United States.
- (3) 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 regulation at 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) or (a)(3) of this section.

The record reflects that at the time of the applicant's interview on October 22, 2002, the applicant was unable to pass a test on the history and government of the United States. It is noted that the applicant attempted to present a letter and certificate dated October 18, 2002 from [REDACTED] a language school in Houston, Texas, which indicated that the applicant had enrolled and completed an 80 hour course of the English Language Citizenship Program. On May 13, 2003, the applicant appeared for a second interview, but the applicant was unable to be placed under oath. A notice in the record from the Houston District Office indicates that the applicant failed to pass the second test.

The director, in his Notice to Intent to Deny issued on August 18, 2003, informed the applicant that the documentation from Agencia Registrada could not be accepted as the entity was not a state recognized accredited learning institution. The applicant was also informed that he had failed to demonstrate his knowledge of the history and government of the United States. In response, counsel submitted a letter dated September 8, 2003 from the Houston Community College, which indicated that the applicant had been accepted to attend its facility.

Counsel requested that the application be held in abeyance until the applicant had the opportunity to complete the required 40 hours of instruction and be scheduled for an additional interview.

Counsel, however, cites no statute or regulation that allows the director to schedule the applicant for a third interview. The regulation only provides *one* opportunity after the failure of the first test. 8 C.F.R. § 245a.17(b).

The regulation at 8 C.F.R. § 245a.17(a)(3) states in part that the applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing the Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview. In the instant case, any documentation from a state recognized, accredited learning institution should have been submitted to CIS prior to or at the time of the applicant's second interview on May 13, 2003. The applicant has failed to meet this requirement as the letter from the Houston Community College was presented subsequent to the applicant's interview.

Accordingly, the applicant has failed to meet his eligibility for adjustment under the LIFE Act.

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