

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

PUBLIC COPY



U.S. Citizenship
and Immigration
Services



L 2

FILE:



Office: HOUSTON

Date: JAN 24 2005

IN RE:

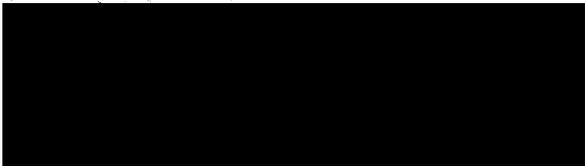
Applicant:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 on appeal. The appeal will be dismissed.

The director denied the application because the applicant had failed to establish that he satisfied the basic citizenship skills required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel argues that the director's decision was in error as the applicant submitted documentation from Brookhaven College indicating that he was currently enrolled in a course of study.

Section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), provides that 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
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General, now the Secretary, Department of Homeland Security, (Secretary)) 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 may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant who was 33 years old at the time he took the basic citizenship skills and provided no evidence to establish that he was developmentally disabled does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Further, the applicant does not satisfy the basic citizenship skills requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (INA). An applicant can demonstrate that he or she meets the requirements of section 312(a) by "[s]peaking and understanding English during the course of the interview for permanent resident status" and answering questions based on the subject matter of approved citizenship training materials, or "[b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS)." 8 C.F.R. § 245a.3(b)(4)(iii)(A)(1) and (2).

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 the applicant was interviewed twice in connection with his LIFE application, on December 28, 2002, and again on July 16, 2003. On both occasions, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. Furthermore, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

The applicant, however, could still meet the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act, if he met one of the criteria defined in 8 C.F.R. § 245a.17(a)(2) and (3). In part, an applicant must establish that he:

- (2) has a high school diploma or general educational development diploma (GED) from a school in the United States; or
- (3) has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance.

The record does not reflect that the applicant has a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(2).

In response to a Notice of Intent to Deny issued on August 29, 2003, the applicant provided a letter dated December 15, 2003 from a representative of Brookhaven College in Dallas Texas. The representative indicated that the applicant was enrolled in an English as a Second Language class from October 7, 2003 to October 22, 2003 for a total of 30 hours, and is currently enrolled in a Naturalization class beginning February 21, 2004 and ending May 8, 2004 for 30 hours at Richland College.

Counsel cites a portion of the regulation at 8 C.F.R. § 245a.17(a)(3), but fails to include the entire section. 8 C.F.R. § 245a.17(a)(3) also states 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, documentation from a state recognized, accredited learning institution should have been submitted to Citizenship and Immigration Services prior to or at the time of the applicant's second interview on July 16, 2003. The applicant has failed to meet this requirement as the letter from Brookhaven College was presented subsequent to the applicant's interview.

As previously mentioned, the applicant failed to meet the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at his two interviews he did not demonstrate a minimal understanding of English and a minimal knowledge of United States history and government.

Therefore, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, 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.