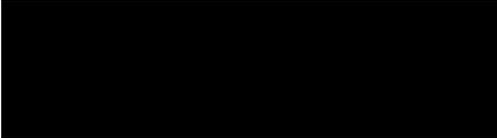


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**U.S. Citizenship
and Immigration
Services**



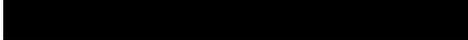
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FILE: 

Office: Houston

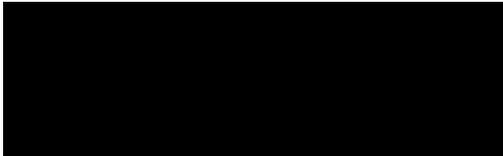
Date:

JAN 24 2005

IN RE: Applicant: 

PETITION: 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:



PUBLIC COPY

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. 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

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

The district director concluded that the applicant failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel for the applicant submits a separate statement along with additional evidence in response to the district office’s notice of denial.

Under section 1104(c)(2)(E)(i) of the LIFE Act (“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
- (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, who is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does he satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because she 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).

As the district director indicated in the denial notice, the applicant was interviewed twice in connection with his LIFE application -- on April 11, 2003 and again on December 3, 2003. According to the notice of intent to deny, at the time of his initial interview, the applicant was unable to write a sentence in English. On neither occasion was the applicant able to demonstrate even a minimal understanding of the English language. There is no indication in the record or in the notice of intent as to whether the history/government part of the test was also administered to the applicant on these occasions.

The remaining question, therefore, is whether the applicant satisfies the alternative “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) of the LIFE Act. This “citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) is further defined by regulation in 8 C.F.R. § 245a.17(2) and (3). As specified therein, an applicant for LIFE Legalization must establish that:

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(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. . . . 8 C.F.R. § 245a.17(3).

The applicant in this case does not have a high school diploma or a GED from a U.S. school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(2). On appeal, counsel for the applicant submits a certificate of completion dated March 24, 2004, indicating the applicant's having completed the ESL-1 course (English As A Second Language) at Houston Community College Northeast. Accompanying the certificate is a photocopy of an itemized tuition statement from Houston Community College.

Counsel, on appeal, asserts that, as there isn't a single institution in Houston, Texas that would satisfy all the necessary educational requirements, applicants are obliged to attend several different courses in order to demonstrate compliance. Notwithstanding counsel's assertions, the regulations at 8 C.F.R. § 245a.17(a)(3) clearly specify that an applicant for adjustment to permanent status under the LIFE Act must submit proof of having attended an accredited institution of learning either at or subsequent to the time of filing the application Form I-485, but prior to or at the time of the applicant's interview. In the present case, the applicant's certification of completion was not proffered until after his application had already been denied. Moreover, neither the applicant nor counsel has provided any information as to whether the ESL-1 course of study pursued by the applicant occurred over a period of one academic year and whether it consisted of at least 40 hours of instruction, both of which are required in 8 C.F.R. §245a.17(3).

At his two successive adjustment interviews at the Houston District Office on April 11, 2003 and December 3, 2003, respectively, the applicant was unable to demonstrate even a minimal understanding of English, thereby failing to satisfy either alternative of the "basic citizenship skills" requirement as set forth in section 1104(c)(2)(E)(i)(II) of the LIFE Act. The documentation provided by counsel, on appeal, does not demonstrate compliance with the requirements as set forth in 8 C.F.R. § 245a.17(3). As such, the applicant has failed to demonstrate that he is satisfactorily pursuing a course of study (recognized by the Attorney General) devoted to achieving an understanding of English.

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.