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U.S. Citizenship
and Immigration
Services

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LD JAN 27 2005

FILE: 

Office: Houston

Date:

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:



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 Interim 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 asserts the applicant was never properly informed of all the options available to him in demonstrating compliance with the basic citizenship skills component of the LIFE Act.

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 he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (INA). An applicant can demonstrate that he 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).

In his notice of intent to deny, the district director indicated that the applicant was interviewed twice on his LIFE application -- on February 14, 2002 and, again, on October 7, 2002. A review of the record indicates that, at the time of his initial interview, the applicant failed to demonstrate reading/writing English skills and, in addition, failed to pass the history/government test. Subsequently, at the applicant’s second interview on October 7, 2002, the Houston district office readministered both the citizenship and English tests to the applicant. On this occasion, the applicant succeeded in passing the history/government test, but once again failed to demonstrate a mastery of reading/writing/English skills.

The remaining question is whether the applicant satisfies the alternative “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) of the LIFE Act. In his Notice of Intent to Deny the district director indicated that the applicant had not presented any evidence that he “ha[d] pursued or w[as] then pursuing an appropriate course of study to achieve such citizenship skills.” The “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 provides several certificates indicative of the applicant having taken ESL (or English as a second language) courses at Jefferson Intermediate School and at Travis Elementary School during the 2000-2001 and 2001-2002 school years, respectively. Nevertheless, counsel's submissions notwithstanding, 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 course certifications were not proffered to Citizenship and Immigration Services (CIS) until after his application had already been denied.

Counsel, on appeal, contends that the applicant was not properly informed at the time of his interview of the alternative basic-skills option providing for an applicant's attendance at an accredited learning institution for one academic year. However, any applicant applying for an immigration benefit -- in this case, adjustment to permanent resident status under the LIFE act -- has the burden of familiarizing himself and demonstrating compliance with all the pertinent requirements involved in establishing eligibility for that particular benefit. It should also be noted in this regard that, at the time he submitted his LIFE application, the applicant was represented by a prior legal counsel. As the applicant's representative at that stage of the application process, it was this individual's responsibility to have informed the applicant concerning the relevant requirements and alternatives involved in establishing eligibility under the LIFE Act. For this reason, counsel's contention on appeal cannot be considered persuasive.

At his two successive adjustment interviews at the Houston District Office on February 14, 2002 and October 7, 2002, respectively, the applicant failed to demonstrate a minimal understanding of English. As such, the applicant fails to demonstrate compliance with the "basic citizenship skills" requirement as set forth in section 1104(c)(2)(E)(i)(II) 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.