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

L2



FILE:



Office: HOUSTON

Date: **NOV 29 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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The district director denied the application because 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 that the applicant submitted a certification from Houston Community College to show his compliance with the basic citizenship skills requirement at his second interview, but such certification was not accepted. Counsel submits an additional copy of the Certificate of Completion from Houston Community College.

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 was 50 years old at the time he took the basic citizenship skills test 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).

In the alternative, an applicant can satisfy the basic citizenship skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act. The “citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(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(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. . . . 8 C.F.R. § 245a.17(a)(3).

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must submit evidence to show compliance with the basic citizenship skills requirement. "...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(b) states 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 [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)] (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.

In the Notice of Intent to Deny issued on January 8, 2004, the district director noted that the applicant had been interviewed in connection with his LIFE application on April 1, 2003. The district director stated in pertinent part, "During the interview, you were given the opportunity to demonstrate your understanding of English and your knowledge and understanding of the history and government of the United States. You were unable to understand sufficient English to be placed under oath and the interview was terminated." The district director further noted that the applicant appeared for his second interview on November 4, 2003, and that he was unable to understand sufficient English for the interview to be conducted. While the record contains documentation that demonstrate the events that transpired during the applicant's interview on November 4, 2003, the record does not contain any evidence to support the district director's conclusions regarding events that occurred during the applicant's first interview on April 4, 2003. If a denial of an application is to be based upon what the applicant purportedly did or was unable to do at the time of the interview, the record must contain a contemporaneous first-hand account of such events.

In addition, counsel submitted a copy of a Certificate of Completion from Houston Community College dated August 15, 2003 that reflects the applicant's successful completion of a course in "English, U.S. History & Government." The Notice of Intent to Deny indicated that the applicant presented this certificate at the time of his second interview on November 4, 2003. However, the district director merely stated that the course did not meet all the criteria under 8 C.F. R. § 245a.17(a)(3), without any citing any specific deficiency or stating why such certificate did not establish the applicant's compliance with the basic citizenship skills requirement.

Accordingly, the decision of the district director is withdrawn. The case will be remanded for the purpose of reviewing the evidence provided by the applicant to demonstrate his compliance with the basic citizenship skills requirement. The district director shall review such evidence to determine whether it is sufficient to establish the applicant's compliance with the basic citizenship skills requirement. If the district director concludes that such evidence is not sufficient to fulfill this requirement, the deficiencies in the evidence must be specifically set forth in a Notice of Intent to Deny prior to the issuing of a new decision. The new decision, if adverse, shall be certified to this office for review.

ORDER: This matter is remanded for further action and consideration pursuant to the above.