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U.S. Citizenship
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Services

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FILE:



Office: Houston

Date: SEP 27 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 she satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel asserts that the applicant attempted to submit certification from Houston Community College to show her compliance with the basic citizenship skills requirement at her interviews on April 1, 2003, and then again on November 7, 2003, but such certification was not accepted. Counsel submits a copy of a Certificate of Completion from Houston Community College dated November 17, 2002 that reflects the applicant's successful completion of a course in "Basic English, U.S. History & Government."

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 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 22, 2004, the district director noted that the applicant had been interviewed in connection with her 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 her second interview on November 7, 2003, and that she failed both the United States history and government test and the test of written English, and that such interview was terminated because she had trouble understanding and speaking English. While the record contains documentation, including the applicant's United States history and government test and her test of written English, that readily demonstrate the events that transpired during the applicant's interview on November 7, 2003, the record does not contain any evidence to support the district director's conclusions regarding events that occurred during her first interview on April 1, 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 claims that the applicant attempted to submit certification from Houston Community College to show her compliance with the basic citizenship skills requirement at her interviews on April 1, 2003, and then again on November 7, 2003, but such certification was not accepted. Counsel submits a copy of a Certificate of Completion from Houston Community College dated November 17, 2002 that reflects the applicant's successful completion of a course in "Basic English, U.S. History & Government." Counsel's claim that the applicant attempted to present this certificate at the time of her interviews can neither be confirmed nor denied from the evidence in the record. However, it must be concluded that this is at least in part the result of the minimal effort made to contemporaneously record and document the specific events that occurred during her interviews, especially the first interview on April 1, 2003. The certificate from Houston Community College is dated well before the date of the applicant's two interviews and demonstrates the applicant's attempt to comply with 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 her 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.