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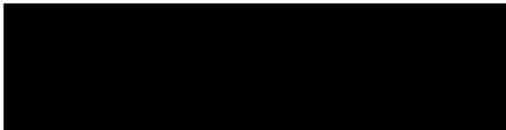
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, D.C. 20529



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

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FILE: [Redacted] Office: DALLAS Date: **OCT 12 2006**  
MSC 01 349 60769

IN RE: Applicant: [Redacted]

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 black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

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

On appeal, counsel states that the applicant has a better understanding of English now and should have been granted a third interview pursuant to her request under 8 C.F.R. § 336.2.

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 48 years old at the time she took the basic citizenship skills test and provided no evidence to establish that she 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 she does not meet the requirements of section 312(a) of the Immigration and Nationality Act (the Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act 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 six 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 her LIFE application, first on November 12, 2002 and again on May 4, 2004. 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 she meets one of the criteria defined in 8 C.F.R. §§ 245a.17(a)(2) and (3). In part, an applicant must establish that she meets the following under 8 C.F.R. § 245a.17:

- (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 or that she has attended or is attending a state recognized, accredited learning institution in the United States, and therefore does not establish that she satisfies the regulatory requirement of 8 C.F.R. § 245a.17(a)(2).

In response to the Notice of Intent to Deny issued by the director on May 6, 2004, counsel submitted a Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings Under Section 336 of the Act, alleging that the applicant “believes she has a better understanding of the English language and more knowledge of the history and government of the United States than that for which she has received credit.” Counsel further stated that the interviewing officer, who was the same in both interviews, told the applicant that she had passed the second test and not to worry, because if she failed the second test, she could take it over again.

The director denied the request for hearing, stating that the applicant lacked grounds for filing for a hearing. On appeal, counsel asserts that this denial was in error, as the “naturalization requirements are adopted by the LIFE Regulations, and the opportunity for another hearing, as provided under those provisions, it should also be available for LIFE cases.” Counsel further implies that the director denied the request for hearing because it was filed on the wrong form, alleging that “the issue of requesting another hearing needs to be reviewed by a higher authority, rather than being dismissed on the basis that the form number does not relate to the category.”

Counsel’s argument is without merit. First, the record does not support counsel’s allegation that the applicant passed the second test or that she was informed that she had done so. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Additionally, nothing in the director’s decision implies that the request for a hearing was denied because it was on the wrong form. The director stated clearly that the request was denied because the applicant did not have grounds for filing the request. We concur.

The regulation at 8 C.F.R. §336.2, quoted extensively by counsel in his brief, provides that “The applicant, or his or her authorized representative, may request a hearing *on the denial* of the applicant’s application for naturalization.” Emphasis added. Counsel submitted his request for a hearing in response to the director’s Notice of Intent to Deny. As there had been no denial, the request was premature and the applicant had no grounds for requesting a hearing under the regulation. Counsel did not submit a new request for a hearing following the denial of the untimely Form N-366.

Further, the administration of the LIFE Act is set forth in 8 C.F.R. Part 245a, Subpart B, which does not incorporate the provisions of 8 C.F.R. Parts 335 or 336. In fact, the regulation at 8 C.F.R. § 245a.17

clearly distinguishes between those applicants filing for benefits under the LIFE Act and those filing for naturalization under Part 332, *et seq.* Subsection (b) of 8 C.F.R. § 245a.17 specifically provides that the applicant will be afforded two opportunities to meet the citizenship skills requirements of the Act. Unlike applicants for naturalization under Part 332, who must retake the test within 90 days, however, the LIFE Act applicant cannot be forced to retake the test before six months have elapsed. Additionally, the LIFE Act applicant, unlike the applicant for naturalization under Part 332, may satisfy the citizenship skills requirement through the alternatives discussed above. Counsel's argument that the applicant can be afforded a third opportunity to meet the citizenship skills requirements pursuant to 8 C.F.R. §336.2 is therefore without merit.

As previously discussed, the applicant failed to meet the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at neither of her two interviews did she demonstrate a minimal understanding of the English language.

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.

Beyond the decision of the director, the applicant has not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. For this additional reason, the application must be denied.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b).

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

*Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

On a form to determine class membership, which she signed under penalty of perjury on July 26, 1990, the applicant stated that she first arrived unlawfully in the United States in March of 1981. The applicant also stated that she left the United States in December 18, 1987 for her father's funeral and did not return until February 14, 1988.

Thus, according to her sworn statement, the applicant was absent from the United States for a total of 57 days. We must, therefore determine whether her prolonged absence from the U.S. was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being."

In other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it made the applicant's return to the United States more than inconvenient, but virtually impossible. The record does not reflect that the circumstances made the applicant's return to the United States within 45 days, virtually impossible. The applicant provides no explanation as to why her return to the United States subsequent to her father's funeral was not accomplished within the 45-day period set by the regulation. Nothing in the record indicates that the applicant's continued stay in Mexico was a situation forced upon her by unexpected events.

Accordingly, the applicant's 57-day stay in Mexico, from December 18, 1987 until February 14, 1988, interrupted her "continuous residence" in the United States. The applicant has, therefore, failed to establish that she resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulations, 8 C.F.R. § 245a.11(b) and 15(c)(1). Given this, she is ineligible for permanent resident status under section 1104 of the LIFE Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the district office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa application proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.