



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 127 65172

Office: HOUSTON

Date: DEC 21 2006

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 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, 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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The 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 for the applicant asserts that she has completed a citizenship skills class and satisfies the basic citizenship skills requirement. In support of her appeal the applicant submits additional evidence.

According to the record, the applicant was interviewed on October 28, 2002, and September 30, 2003. At both interviews the applicant could not be placed under oath and could not be interviewed because she could not speak or understand English.

On October 25, 2004, the director denied the application because the applicant had failed to establish that she satisfied the basic citizenship skills requirements.

The regulations at 8 C.F.R. § 245a.20(a)(2) state, in pertinent part:

Denials. The alien shall be notified in writing of the decision of denial and of the reason(s) therefore. When an adverse decision is proposed, CIS shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted a period of 30 days from the date of the notice in which to respond to the notice of intent to deny. All relevant material will be considered in making a final decision.

A review of both the electronic and administrative record reveals that a notice of intent to deny was never issued to the applicant, his former representative, or current counsel.

On appeal the applicant has submitted a copy of a letter, dated October 26, 2002, from Centro Hispano Educativo. The letter is dated two days before her first interview and states that the applicant has completed a 40 hour course from August 24, 2002, to October 26, 2002, and passed two "citizenship level" examinations. However, the AAO would note that the applicant was unable to understand enough English to be placed under oath at either of her subsequent interviews. The letter does not establish that the program follows a curriculum of one academic year with 40 hours of instruction in English, U.S. government and history. Nor does the letter explain or establish that the institution at which the applicant attended the class is a state recognized, accredited learning institution. 8 C.F.R. § 245a.17(a)(3). In addition, if the applicant is enrolled in such a program they must provide documentation of such prior to or during the LIFE interview. *Id.* Thus, the evidence submitted by the applicant does not establish that she was attending a state recognized, accredited learning institution for one academic year in a curriculum including 40 hours of instruction in English, and United States government and history.

The AAO would note that the applicant is ineligible because of her failure to understand sufficient English to be placed under oath and thus cannot establish that she has basic citizenship skills. In addition to this basis of ineligibility, the record reveals that some of the applicant's documentation includes different social security numbers associated with her, indicating possible social security fraud.

However, the director failed to provide the applicant with a Notice of Intent to Deny (NOID) pursuant to 8 C.F.R. § 245a.20.

Accordingly, the decision of the district director is withdrawn. The case will be remanded for the purpose of the issuance of a notice of intent to deny, which addresses the inconsistencies in the evidence and the basis for the proposed denial, as well as a new decision to both counsel and the applicant. The regulation at 8 C.F.R. § 245a.6 provides, in pertinent part:

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director *shall* consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A).

(Emphasis added).

Accordingly, this case is remanded for a determination as to the applicant's eligibility for adjustment of status to that of a temporary resident pursuant to 8 C.F.R. § 245a.6.

ORDER: The application is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the applicant, is to be certified to the Administrative Appeals Office for review.