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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE:

[Redacted]
MSC 02 244 60090

Office: DALLAS

Date: **MAY 04 2006**

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:

[Redacted]

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.

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 on appeal. The appeal will be dismissed.

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

On appeal, the representative asserts that the applicant suffers from memory loss, which renders him incapable to learn the English language.

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 42 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 (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 6 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 his LIFE application, on February 7, 2003, and again on November 6, 2003. On the 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 have met the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act by showing pursuant to 8 C.F.R. §§ 245a.17(a), that he:

- (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 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. The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing the Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview.

The record does not reflect that the applicant has a high school diploma or a GED from a United States school and, therefore, does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(a)(2).

The applicant presented a certificate dated April 24, 2003 from the Mountain View College of the Dallas County Community College District, indicating that the applicant had successfully completed the requirements of English as a Second Language - Pre Literacy Level. However, no evidence has been submitted to establish the qualifications of Mountain View College or that the course of study provided by the college contains the requisite "citizenship skills" component specified in 8 C.F.R. § 245a.17(3).

In response to a Notice of Intent to Deny issued on November 18, 2003, the representative asserted that the applicant had registered and was attending an English class which ended in January 2004. The representative requested an extension in order for the applicant to comply with the requirements.

The representative, however, cites no statute or regulation that compels the director to schedule the applicant for third interview. The regulation only provides *one* opportunity after the failure of the first test. See 8 C.F.R. § 245a.17(b). Furthermore, evidence of the applicant's enrollment would have had to be submitted to Citizenship and Immigration Services prior to or at the time of the applicant's second interview on November 6, 2003 in order to meet the requirement of 8 C.F.R. § 245a.17(3).

On appeal, the representative submits a letter from [REDACTED] of Rodriguez Chiropractic Clinic in Dallas, Texas, who indicates that the applicant has been under his care since April 19, 2002 for an on the job injury he sustained on February 19, 2002. [REDACTED] asserts that the applicant fell on a metal pipe which injured his left hip, left lower ribs and left side of his lower back. [REDACTED] states that although the applicant informed him that he has had complications with memory loss, he has not treated the applicant for these complaints and there are no records of such complaints in his work injury documentation.

The regulation at 8 C.F.R. § 312.2(2) requires all persons applying for naturalization and seeking an exception from the requirements of § 312.1(a) and paragraph (a) of this section based on the disability exceptions must submit Form N-648, Medical Certification for Disability Exceptions, to be completed by a medical or osteopathic doctor licensed to practice medicine in the United States or a clinical psychologist licensed to practice psychology in the United States (including the United States territories of Guam, Puerto Rico, and the Virgin Islands). In the instant case, the applicant has not provided said form. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 his two interviews he did not demonstrate a minimal understanding of the English language and a minimal knowledge of United States history and government.

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.

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