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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

MSC 02 249 63504

Office: HOUSTON

Date: NOV 02 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. 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, 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 he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, the applicant’s authorized representative states that the applicant is 70 years old and was eligible for a waiver of the citizenship requirements of the statute.

The regulation at 8 C.F.R. § 245a.20(a)(2) provides that when an adverse decision is proposed, Citizenship and Immigration Services shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted 30 days from the date of the notice in which to respond to the Notice of Intent to Deny (NOID).

The record, however, does not reflect that a NOID was issued prior to the director’s Notice of Decision. Accordingly, the case is remanded for the issuance of a NOID and for the entry of a new decision in accordance with the foregoing. If the new decision is adverse, it shall be certified to this office.

On remand, the director should address the applicability of a waiver for the applicant. Section 1104(c)(2)(E)(i) of the LIFE Act (“Basic Citizenship Skills”) provides:

- (i) In General – The alien must demonstrated that the alien either –
  - (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.
- (ii) Exception For Elderly Or Developmentally Disabled Individuals – The Attorney General may, in the discretion of the Attorney General, waive all or part of the requirements of clause (I) in the case of an alien who is 65 years of age or older or who is developmentally disabled.

The applicant was 70 years of age on July 21, 2003, the date of his first interview, and 71 years of age at the time of his second interview on October 4, 2004. On remand, the director should address whether a waiver of the requirements of section 1104(c)(2)(E)(i)(I) of the LIFE Act is appropriate in the present case.

Additionally, although the director found the applicant ineligible for permanent resident status under section 1104 of the LIFE Act, the director failed to consider the applicant’s eligibility for adjustment of status to that of a temporary resident. 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, on remand, the director should also address the applicant's eligibility for adjustment of status to that of a temporary resident pursuant to 8 C.F.R. § 245a.6.

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