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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: DALLAS Date: NOV 08 2006  
MSC 02 282 60742

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 Director, Dallas, and is now before the Administrative Appeals Office (AAO) on appeal. This appeal will be sustained.

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 counsel for the applicant asserts that the applicant is illiterate in his native language and suffers from a developmental disability and is thus entitled to a waiver of the requirements of section 312(a) of the Immigration and Nationality Act (the Act).

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 pertinent regulation regarding aliens to be granted an exception to the basic citizenship skills requirement and those circumstances under which the Attorney General could consider a waiver of such requirement is contained at 8 C.F.R. § 245a.17(c) and states the following

Exceptions. LIFE Legalization applicants are exempt from the requirements listed under paragraph (a)(1) of this section if he or she has qualified for the same exceptions as those listed for naturalization applicants under §§ 312.1(b)(3) and 312.2(b) of this chapter. Further, at the discretion of the Attorney General, the requirements listed under paragraph (a) of this section may be waived if the LIFE Legalization applicant:

- (1) Is 65 years of age or older on the date of filing; or
- (2) Is developmentally disabled as defined under 8 C. F. R. § 245a.1(v).

A review of the record reveals that the applicant was born on November 12, 1935. The applicant filed this petition for LIFE Act legalization on July 9, 2002. The applicant was 66 at the time this petition was filed. It does not appear that the director considered whether or not the alien merited a favorable exercise of discretion with regard to the applicant’s age at the time the basic citizenship skills test was administered.

Like a grant of adjustment of status, the grant of an application for a waiver of the testing requirement under section 1104(c)(2)(E)(i) of the LIFE Act is a matter of administrative grace. *Cf. Matter of Marques*, 16 I&N Dec. 314 (BIA 1977). An applicant has the burden of showing that discretion should be exercised in his favor. *Matter of Patel*, 17 I&N Dec. 5997 (BIA 1980); *Matter of Leung*, 16 I&N Dec. 12 (BIA 1976); *Matter of Arai*, 13 I&N Dec. 494 (BIA 1970). The applicable statute does not contemplate that all aliens who meet

the required legal standards will be granted the waiver since the grant is a matter of discretion and of administrative grace, not mere eligibility. *Cf. Matter of Ortiz-Prieto*, 11 I&N Dec. 317 (BIA 1965). Where adverse factors are present in any given application for a testing waiver, it may be necessary for the applicant to offset these by showing of unusual or even outstanding equities. *Id.* Generally, unfavorable factors may include a criminal history, a refusal to cooperate, a failure to respond to material questions or a failure to establish identity. Favorable factors such as family ties, hardship, length of residence in the United States, etc. can be considered as countervailing factors meriting favorable exercise of administrative discretion. In the absence of adverse factors, a request for a waiver will ordinarily be granted, still as a matter of discretion. *Matter of Arai*, 13 I&N Dec. 494 (BIA 1970). However, an absence of major adverse factors alone does not warrant the grant of the waiver. *Matter of Blas*, 15 I&N Dec. 626 (BIA 1974). The discretionary relief provided in section 1104(c)(2)(E)(i) of the LIFE Act can only be granted in meritorious cases. *Id.* A director must articulate why he or she is not exercising discretion favorable to an applicant. In this case the director failed to articulate a basis for declining to grant a waiver based on the applicant's age.

With this in mind, the AAO notes that the initial threshold for the grant of the testing waiver is a low one: the applicant must simply demonstrate that he or she is 65 years old or older on the date of filing. Section 1104(c)(2)(E)(i) of the LIFE Act. Once an applicant provides evidence that he or she meets this threshold, the waiver will normally be granted. The exercise of discretion does not mean the decision can be arbitrary, inconsistent or dependent upon intangible or imagined circumstances. When denying an application, the director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing an applicant why the evidence failed to satisfy his or her burden of proof. *See* 8 C.F.R. § 103.3(a)(1)(i).

In this case the applicant was 66 at the time he filed his application for legalization under the LIFE Act. The record supports that the alien is 66 years old, and the AAO would note that the physical characteristics cited by Dr. [REDACTED] on the applicant's most recent I-693 (mild neurocognitive disorder – DSM IV) might present an additional burden for the applicant to overcome. Other favorable factors include the length of the time that the applicant has resided in the United States and the presence of the applicant's immediate family members in the United States. For these reasons the AAO's considers it appropriate to grant a waiver of the basic citizenship skills test based on the applicant's age and the appeal will be sustained.

Thus, the applicant's appeal will be sustained. The director shall continue the adjudication of the application for permanent resident status.

**ORDER:** This appeal is sustained.