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U.S. Citizenship  
and Immigration  
Services

L2

[Redacted]

FILE: [Redacted]  
MSC 02 245 62658

Office: HOUSTON

Date: OCT 25 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 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. The appeal will be dismissed.

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

On appeal, the applicant asserts that she is attending a state recognized accredited learning institution in the United States and wishes to be tested a third time in order to demonstrate her basic citizenship skills.

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding 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 who are developmentally disabled. *See also* 8 C.F.R. § 245a.17(c).

An applicant may establish that he or she has met the requirements of section 312(a) of the Immigration and Nationality Act (Act) by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. *See* 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 and 312.2.

An applicant may also establish that he or she has met the requirements of section 312(a) of the Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2).

Finally, an applicant may establish that he or she has met the requirements of section 312(a) of the Act by providing evidence that he or she has attended or is attending a state recognized, accredited learning institution in the United States, following a course of study which spans one academic year and that includes 40 hours of instruction in English and United States history and government. The applicant may provide documentation of such on the letterhead stationary of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3).

The applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after 6 months: to

pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit evidence that he or she has attended or is attending a state-recognized, accredited learning institution in the United States, following a course of study which spans an academic year and that includes 40 hours of instruction in English and United States history and government. *See* 8 C.F.R. § 245a.17(b).

On June 2, 2002, the applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On March 7, 2003, the applicant was interviewed in connection with her LIFE Act application. She failed to demonstrate a minimal understanding of ordinary English and knowledge of U.S. government and history.

On September, 12, 2003, the applicant was interviewed a second time and again failed to demonstrate a minimal understanding of ordinary English and knowledge of U.S. government and history.

On September 16, 2003, the director issued the notice of intent to deny (NOID) and indicated that the applicant had twice failed the basic citizenship skills examination and gave the applicant 30 days to respond with any additional evidence eligibility.

In response the applicant submitted a letter from [REDACTED] Houston Community College System (HCCS), dated October 15, 2003, stating that the applicant was enrolled and taking 18 hours of class instruction in history and government and would finish the course on October 18, 2003.

On March 9, 2004, the director denied the application based on the reasons set out in the NOID.

On appeal, the applicant requests another opportunity to take the basic citizenship skills examination administered at the LIFE interview.

The record verifies that the applicant did not pass the basic citizenship skills examination on March 7, 2003 and on September 12, 2003.

In support of her appeal the applicant submitted the following documentation:

- A letter from [REDACTED], husband of the applicant, dated March 30<sup>th</sup>, 2004, asserting that the applicant is of good moral character and speaks the English language well verbally.
- A letter from [REDACTED] owner of the Garden Oaks Adult Activity Center, dated March 30, 2004, stating the applicant has no difficulty understanding or speaking English, and points out that the applicant had to take and pass the written tests for a driver's license.
- A letter from [REDACTED] Director of The Association for the Advancement of Mexican Americans (AAMA), dated March 25, 2004, asserting that the

applicant was an attendee of their English as a Second Language (ESL) class from September through November of 2003, and referred to the applicant as high intermediate in terms of ESL skill.

- A Marriage Certificate from the County of Harris, Texas, dated May 21, 2003, between [REDACTED] and [REDACTED]
- A copy of a Certificate of Completion of "Citizenship Preparation", awarded on October 18, 2003, by the Houston Community College System.

The regulations do not provide for a third opportunity to take the basic citizenship skills examination. The regulations state that an applicant will be given two opportunities to demonstrate a minimal understanding of ordinary English and knowledge of U.S. government and history. The applicant did not demonstrate such knowledge at either of her two interviews.

The applicant has submitted documentation of her completion of a citizenship preparation class. The certificate of Completion for the Citizenship Preparation class does not indicate that the applicant was attending such class at the time of her interview, nor does it establish that the program consists of one academic year with 40 hours of instruction in English, U.S. government and history as required by the regulation at 8 C.F.R. § 245a.17(c). The applicant must provide documentation of such prior to or during the LIFE interview. Thus the evidence submitted by the applicant does not establish that she is eligible for an exemption based on attendance of a qualifying educational program.

The regulations state that to fulfill the LIFE Act requirements relating to basic citizenship skills an applicant may provide his or her high school diploma or GED from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2). The applicant has not provided a high school diploma or GED from a school in the United States.

The applicant is not 65 years old or older and is not developmentally disabled. Thus, she does not qualify for either of the exceptions listed in section 1104(c)(2)(E)(ii) of the LIFE Act.

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 AAO will not disturb the director's decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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, 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.