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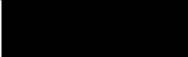
U.S. Citizenship
and Immigration
Services

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FILE:



Office: DALLAS

Date:

SEP 21 2006

MSC 02 239 63494

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert F. Wienmann, 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 she satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel states that the applicant is attending Mountain View College, a state recognized learning institution, and that she presented evidence of her attendance at the school. Counsel states that the beneficiary is taking courses in English and government and therefore meets the exception to the requirement of the LIFE 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 applicant, who was 45 years old at the time she took the basic citizenship skills test and provided no evidence to establish that she 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 she 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 six 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 her LIFE application, first on January 21, 2003 and again on September 2, 2003. On 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 still meet the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act, if she met one of the criteria defined in 8 C.F.R. §§ 245a.17(a)(2) and (3). In part, the applicant must establish that she meets one of the following criteria under 8 C.F.R. § 245a.17:

- (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 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).

In response to the director's Notice of Intent to Deny, the applicant submitted a copy of a July 14, 2003 certificate and copies of transcripts from Mountain View College, Continuing Education and Contract Training, reflecting that the applicant completed a level one English as a second language course. On appeal, counsel states that this is sufficient to establish that the applicant qualifies for the exception under 8 C.F.R. § 245a.17(a)(3).

The documentation from Mountain View College does not provide any confirmation that the class taken by the applicant has a course content that includes 40 hours of instruction in English and United States history and government or that the course of study is for a period of one year as required by 8 C.F.R. § 245a.17(a)(3). Furthermore, 8 C.F.R. § 245a.17(a)(3) requires that the applicant 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. In the instant case, documentation from a state recognized, accredited learning institution should have been submitted to Citizenship and Immigration Services (CIS) prior to or at the time of the applicant's second interview on September 2, 2003. However, the documentation from Mountain View College was presented subsequent to the applicant's interview. Therefore, she failed to meet this requirement.

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 neither of her two interviews did she demonstrate a minimal understanding of the English language and 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.

Beyond the decision of the director, the applicant failed to demonstrate that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Although CIS regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant stated that she first entered the United States without inspection in November of 1981, and that she did not leave the United States during the qualifying period.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

1. An August 27, 1990 notarized statement from ██████████ in which he stated that he is a friend of the applicant's and that she has resided continuously in the United States since November 1981. Mr. ██████████ did not indicate the circumstances of his initial acquaintance with the applicant and the applicant submitted no evidence that Mr. ██████████ was present and living in the United States in November 1981. Mr. ██████████ reaffirmed his statements in a May 18, 2002 sworn statement; however, he provided no further details regarding his acquaintance with the applicant or her continued residency in the United States during the qualifying period.
2. An August 27, 1990 sworn statement from ██████████ in which she stated that the applicant worked for her as her housekeeper and babysitter from December 1984 through April 1990. Ms. ██████████ stated that she provided the applicant with room and board plus wages of \$55 per week. The applicant submitted no evidence to reflect that Ms. ██████████ lived at the address indicated during the stated time frame. The applicant did not submit any evidence of payment, such as canceled checks or similar documentation. Ms. ██████████ reaffirmed her statements in a May 18,

2002 sworn statement; however, the applicant submitted no additional documentation regarding her employment with Ms. [REDACTED]

3. An August 27, 1990 sworn statement from [REDACTED] in which she stated that the applicant worked for her from November 1981 to December 1984, and was provided with \$35 per week plus room and board. The applicant submitted no evidence reflecting that Ms. [REDACTED] lived at the address indicated during the stated time frame, and submitted no documentary evidence of payment for her services. Ms. [REDACTED] reaffirmed her statements in a May 20, 2002 sworn statement; however, the applicant submitted no additional documentation regarding her employment with Ms. [REDACTED]
4. An October 16, 2001 notarized statement from [REDACTED] who stated that she has known the applicant since May 1981. However, Ms. [REDACTED] did not state when and how she became acquainted with the applicant, who claimed to have entered the United States in November 1981, or that the applicant was present and living in the United States during the qualifying period.
5. An October 16, 2001 sworn statement from [REDACTED] in which she stated that she has known the applicant since February 1981 as a personal friend of the family. Ms. [REDACTED] did not state when and how she became acquainted with the applicant or that the applicant was present and living in the United States during the qualifying period.

In this instance, the applicant has submitted five third-party statements attesting to her continuous residence in the United States during the period in question. Affidavits in certain cases can effectively meet the preponderance of evidence standard. However, the statements submitted by the applicant are vague and provides no evidence that can be corroborated or verified. The applicant submitted no contemporaneous evidence of her presence in the United States during the qualifying period. Accordingly it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa application proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

We note that the applicant stated that she was “detained in San Antonio, Texas and given Voluntary Departure in December of ’98,” and that she was sent to Mexico but returned shortly thereafter. The record contains no evidence of this removal and therefore does not clearly establish whether the applicant is inadmissible to the United States or whether a waiver of such inadmissibility must be obtained.

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