



U.S. Citizenship
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FILE:



Office: Los Angeles

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MSC 02 145 61703

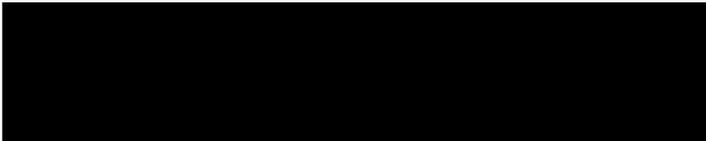
IN RE:

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. 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The district director concluded the applicant had abandoned her application for permanent residence by failing to respond to a request for additional supporting documentation within the requisite time and, therefore, denied the application.

On appeal, the applicant indicates that she did complete a course in English as a second language on September 29, 2004 and subsequently provided proof of completion of this class at the time of her interview on October 7, 2004.

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:

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

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 requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does she 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 (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).

In the alternative, an applicant can satisfy the basic citizenship skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act. The "citizenship skills" requirement of the section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States . . . 8 C.F.R. § 245a.17(a)(2), or

He or she 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 8 C.F.R. § 245a.17(a)(3).

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must submit evidence to show compliance with the basic citizenship skills requirement "...either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview. . . ."

The regulation at 8 C.F.R. § 245a.17(b) states 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) and (a)(3) of this section [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)]. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

The record reflects that the applicant submitted a Form I-485 LIFE Act application to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) on February 22, 2002. The record shows that the applicant appeared for her first interview relating to her LIFE Act application at CIS's Los Angeles, California District Office on March 13, 2003. Although the district director stated that the applicant had been given the opportunity to establish her compliance with the basic citizenship skills at her interview on March 13, 2003 in the notice of denial, the record contains no evidence demonstrating the events that transpired during the applicant's interview on this date. At the conclusion of this interview, the applicant was issued a Form I-72, Request for Additional Information, in which she was asked to provide documentation to establish her compliance with the basis citizenship skills requirement and additional evidence to support her claim of continuous residence in the United States from prior to January 1, 1982 to May 4, 1988. The applicant was granted until October 7, 2004, the scheduled date of her next interview, to submit the requested documentation.

The record reflects that the applicant appeared for her second interview on October 7, 2004 and provided a letter reflecting her completion of seventy hours of instruction in English as a second language on September 29, 2004 at the Ford Park Community Adult School in Bell Gardens, California. The record contains evidence demonstrating that the applicant failed the United States history and government test at the time of her second interview on October 7, 2004. The record shows that the district director issued a notice of denial to the applicant on this date based upon the conclusion that she had abandoned her Form I-485 LIFE Act application by failing to respond to the request for additional supporting documentation reflecting her attempts to establish her compliance with the basic citizenship skills requirement.

The regulations at 8 C.F.R. § 245a.20(a)(2) state, in pertinent part:

Denials. The alien shall be notified in writing of the decision of denial and of the reason(s) therefore. When an adverse decision is proposed, CIS shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted a period of 30 days from the date of the notice in which to respond to the notice of intent to deny. All relevant material will be considered in making a final decision.

A review of both the electronic and administrative record reveals that a notice of intent to deny was never issued to either the applicant or counsel. Accordingly, the decision of the district director is withdrawn.

The case will be remanded for the purpose of reviewing the documentation contained in the record relating to the applicant's attempts to establish her compliance with the basic citizenship skills requirement as well as the evidence provided by her to demonstrate her continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. If the district director concludes that the applicant is ineligible for any reason or that the submitted evidence is not sufficient to establish either her compliance with the basic citizenship skills requirement or her continuous residence in this country for the requisite period, such issues must be specifically set forth in a notice of intent to deny prior to the issuance of a new decision to the applicant. The new decision, if adverse, shall be certified to this office for review.

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