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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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[Redacted]

FILE:

[Redacted]

Office: DALLAS

Date: DEC 10 2007

MSC 02 026 63137

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 National Benefits Center. 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, Dallas, 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 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 asserts that the director erroneously denied the instant application. Counsel asserts that the applicant did satisfy the basic citizenship skills requirement. Counsel also contends that the director erroneously indicated that the applicant did not timely respond to the Notice of Intent. Counsel asserts that the applicant has proof of the response.

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 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 he satisfy the Basic Citizenship Skills requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he 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 Basic 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.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE Act application, on September 12, 2002, and again on October 23, 2003. On both occasions, the applicant failed to demonstrate a minimal understanding of ordinary English and knowledge of history and government of the United States. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). The applicant does not have 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 a September 12, 2005, Notice of Decision, the director stated that the applicant provided no new evidence in response to the director’s Notice of Intent to Deny dated May 25, 2005. On appeal, counsel asserts that the applicant responded in a timely manner. Counsel provides copies of the evidence previously submitted. Counsel contends that based on the evidence the applicant has satisfied the Basic Citizenship Skills requirement.

Counsel submitted a June 7, 2005, letter from ESL advisor, [REDACTED] who stated that the applicant was enrolled at Mountain View College, an accredited college. The affiant also stated that the applicant's class was scheduled to begin on June 27, 2005. The course consisted of 50 classroom hours. The affiant also noted that the applicant enrolled in a citizenship class scheduled to begin on June 18, 2005, for six classroom hours.

Counsel also submitted two certificates from Mountain View College. The first certificate, dated September 3, 2005, indicates that the applicant successfully completed ESL Fundamentals for Workforce for 4.8 continuing education units. The second certificate, dated June 18, 2005, indicates that the applicant successfully completing Citizenship Basics 0.6 continuing education hours.

It appears that the applicant enrolled in classes after receiving the Notice of Intent to Deny, dated May 25, 2005. The applicant was not attending Mountain View College at the time of the second interview on October 23, 2003. Therefore, the applicant did not submit any of the above evidence before or at his second interview. This requirement is a mandatory time frame and clearly stated in the regulations at 8 C.F.R. § 245a.17(a)(3).

The record also reflects that the applicant submitted the following evidence: 1) an ESL Data Form from Dallas Independent School District, dated August 17, 2002 and 2) a January 18, 2003, certificate of achievement from Dallas Independent School District for completion of a citizenship class. Neither form of evidence indicates whether the school is a state recognized, accredited learning institution, the course of study a period of one academic year or the curriculum includes at least 40 hours of instruction in English and United States history and government as required under 8 C.F.R. § 245a.17(a)(3).

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.

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