



U.S. Citizenship  
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Services

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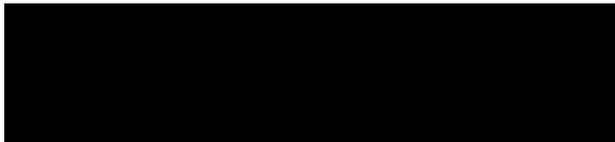
MSC 02 144 60207

Office: NEW YORK

Date: JUL 06 2007

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:

SELF-REPRESENTED

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 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, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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

On appeal, the applicant requests another test, as he is now taking English courses.

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 February 21, 2002, the applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On August 30, 2004, the applicant was interviewed in connection with his LIFE Act application. He failed to demonstrate a minimal understanding of ordinary English and knowledge of United States history and government during the examination portion of the interview.

On August 30, 2004, the director issued the notice of intent to deny (NOID) in which she indicated that the applicant had failed the basic citizenship skills examination at his date LIFE interview. She notified the applicant that he would have a final re-examination on March 5, 2005. She indicated that if he failed that examination or if he failed to appear for the second interview, his LIFE Act application would be denied.

On March 5, 2005, the applicant again failed to demonstrate a minimal understanding of ordinary English and knowledge of United States history and government at the second LIFE interview.<sup>1</sup>

On April 28, 2005, the director denied the application based on the reasons set out in the NOID.

The record verifies that the applicant did not pass the basic citizenship skills examination on August 30, 2004 and March 5, 2005.

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, he does not qualify for either of the exceptions listed in section 1104(c)(2)(E)(ii) of the LIFE Act.

The applicant has failed to demonstrate that he has met the basic citizenship skills requirement as described at 1104(c)(2)(E) of the LIFE Act. Thus, he is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act.

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Beyond the decision of the director, court documents in the record of proceeding indicate the following:

1. On May 29, 1992, the applicant was convicted of *Driving While Intoxicated* in violation of section 1192.3 of the New York Vehicle and Traffic Code, violation, in the New York City Municipal Court (Docket # [REDACTED])
2. On May 19, 1997, the applicant was convicted of *Disorderly Conduct* in violation of section 240.20 of the New York Penal Code, a violation, in the New York City Criminal Court (Docket # [REDACTED])
3. On October 14, 1998, the applicant was convicted of *Disorderly Conduct* in violation of section 240.20 of the New York Penal Code, a violation, in the New York City Criminal Court (Docket # [REDACTED])
4. On March 5, 1999, the applicant was convicted of *Disorderly Conduct* in violation of section 240.20 of the New York Penal Code, a violation, in the New York City Criminal Court (Docket # [REDACTED])

The court records refer to the violations of section 240.20 of the New York Penal Code as a "violation." According to section 70.15.4 of the New York Penal Code, a sentence for a "violation" shall be a definite sentence and shall not exceed 15 days. According to the regulation at 8 C.F.R. 245a.1(o), "misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. 245a.1(p). Any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

The violations listed above (numbers 2-4) are punishable by imprisonment for a maximum of 15 days; therefore, they are misdemeanor convictions. An alien must establish that the alien has not been convicted of any felony or of three or more misdemeanors in the United States to establish he is admissible as an immigrant and eligible for status as a permanent resident under the LIFE Act. 8 C.F.R. § 245a.11(d)(1). Here, the applicant has been convicted of four misdemeanors; therefore, he is ineligible for permanent resident status under the LIFE Act. For this additional reason, the application may not be approved.

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).

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