



U.S. Citizenship  
and Immigration  
Services

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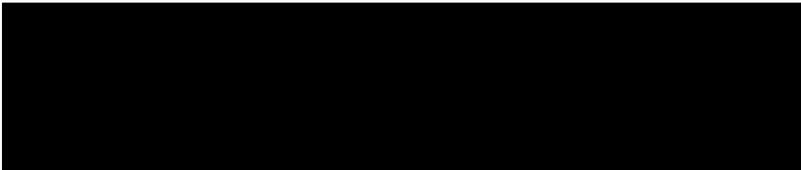
Office: NEW YORK

Date: MAY 22 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:



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. 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The AAO remands the case for further action and consideration.

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 contends that the decision should be reversed because the English writing test given to the applicant at his two interviews was improper. Counsel asserts that the applicant was required to write sentences not found in the authorized federal textbooks on citizenship as required by 8 C.F.R. § 245a.17(a)(1), which applies the testing requirements found at 8 C.F.R. § 312.1(c) to LIFE Act cases.

8 C.F.R. § 245a.20(a)(2) requires that when an adverse decision is proposed, an applicant for LIFE legalization must be notified of the intention to deny the application and the basis for the proposed denial, and granted a period of 30 days to respond to this notice.

Here, the applicant was issued a Notice of Intent to Deny (NOID) immediately following the interview in which he failed the English literacy test for the first time. In the NOID, the director notified the applicant that he would be granted 6 months from the date of the notice to prepare himself for a “second and final re-examination” on September 10, 2001 and that denial of his application could “be based solely on the failure to pass the basic citizenship skills requirements.”

The regulation at 8 C.F.R. § 245a.20(a)(2) requires that an applicant be granted 30 days to respond to the NOID, which allows an applicant the opportunity to overcome the grounds for the proposed denial. In this case, the director issued the NOID prior to allowing the applicant a second attempt to meet the basic citizenship requirements. Although the director notified the applicant that the application could be denied if the applicant failed to meet the basis citizenship requirements upon re-examination, the grounds for denial did not then exist and the applicant was not afforded an opportunity to address any issues arising out of his second interview prior to having his application denied.

Furthermore, the record supports counsel’s contention that the applicant was required to write sentences not found in the authorized federal textbooks. The regulation at 8 C.F.R. § 245a.17(a)(1) applies the English literacy testing requirements found at 8 C.F.R. § 312.1(c) to LIFE Act cases.

Section 312(a) of the Immigration and Nationality Act (the Act) requires that any person seeking to become a naturalized citizen must be able to demonstrate:

- (1) an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language: Provided, That the requirements of this paragraph relating to ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable conditions shall be imposed upon the applicant.

The regulation at 8 C.F.R. § 312.1(c)(2) limits the sources from which these "simple words and phrases" may be taken:

(2) *Reading and writing skills.* Except as noted in § 312.3, an applicant's ability to read and write English shall be tested using excerpts from one or more parts of the Service authorized Federal Textbooks on Citizenship written at the elementary literacy level, Service publications M-289 and M-291.

The applicant should have been given the opportunity to demonstrate that errors had occurred in the administration of the English literacy test, and had these assertions duly considered, prior to the denial of his application.

Accordingly, this case is remanded for the issuance of a new decision. If the director determines that the application should be denied, the director shall issue a Notice of Intent to Deny containing a detailed statement of the basis for the proposed denial, and the applicant must be granted a period of 30 days to respond to this notice. If, following this period, the director's final decision is adverse to the applicant, it shall be certified to this office.

**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 AAO for review.