



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: EL PASO

Date: NOV 19 2007

MSC 02 252 61932

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 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, El Paso, Texas, and is now before the Administrative Appeals Office on appeal. This matter will be remanded for further action and consideration.

The director denied the application because the applicant 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 course completed by the applicant complied with the requirements of the regulations. Counsel submits an additional document in support of the appeal.

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 46 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 February 12, 2004 and again on April 14, 2004. The record does not reflect that the applicant requested an interview prior to the expiration of six months following her initial interview. At neither of her interviews did the applicant 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 meets one of the criteria defined in 8 C.F.R. §§ 245a.17(a)(2) and (3). In part, an applicant must establish that she meets the following 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).

The record reflects that at her second interview on April 14, 2004, the applicant submitted an October 2, 2003 letter from the El Paso Community College-Community Education Program, which stated that the applicant was registered for the spring 2003 semester, and that she attended an English Literacy Civics class for 186 hours. The letter from the school did not indicate that the course of study was for one academic year or that it included any instruction in United States history and government.

In response to the director's Notice of Intent to Deny dated May 25, 2004, the applicant submitted a copy of a June 28, 2003 certificate from The El Paso Community College El Civics Program, recognizing the applicant's participation in the course. However, the certificate provided no additional documentation regarding the content of the class. The applicant also submitted a copy of a December 16, 2003 "certificate of completion" from the Diocesan Migrant and Refugee Services of El Paso, Texas, indicating that the applicant had completed its 30-hour citizenship and English as a Second Language Course. The document contains no information to establish that the Diocesan Migrant and Refugee Services of El Paso, Texas is a state recognized, accredited learning institution, and on its face does not establish that the course attended by the applicant included 40 hours of instruction in English and United States history and government.

On appeal, counsel asserts that the course at El Paso Community College included 40 hours of instruction in English and history. Counsel submits a December 13, 2004 letter from El Paso Community College, indicating that the applicant completed over 40 hours of English literacy and U.S. history and government. However, the letter did not indicate that the course of study was the equivalent of one academic year, according to the standards of the institution.

Furthermore, the regulation at 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, although the applicant timely submitted documentation from El Paso Community College, the documentation lacked the information required by the regulation.

Accordingly, the applicant has not established that she satisfies either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. However, as the applicant's second interview was held prior to the expiration of the six months permitted by the regulation, the matter is

remanded for the director to grant the applicant another interview in accordance with 8 C.F.R. § 245a.17(b) and for the entry of a new decision in accordance with the foregoing. If the new decision is adverse, it shall be certified to this office.

On remand, the director shall also consider the applicant's eligibility for adjustment of status to that of a temporary resident pursuant to 8 C.F.R. § 245a.6, which provides, in pertinent part:

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director *shall* consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A).

(Emphasis added).

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