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U.S. Citizenship
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FILE:

[REDACTED]
MSC 02 241 63038

Office: NEW YORK

Date:

NOV 21 2007

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, of 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 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, the applicant¹ submits a notarized statement claiming that he is making every effort to improve his English, including enrolling in an additional course to improve his writing skills. He submits receipts for this course in addition to an affidavit from the applicant’s son in support of his father’s diligent efforts.

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 was 50 years old at the time he took the basic citizenship skills test and provided no evidence to establish that he 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 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).

¹ Although the Form I-290B was filed by the applicant, the office notes that according to a previously-filed entry of appearance, Robert Fuchs represents the applicant. Since no withdrawal of counsel’s appearance on behalf of the applicant is in the record, the office will presume that counsel is still representing the interests of the applicant in this matter, and will therefore forward notice of the decision on appeal to both counsel and the applicant. See 8 C.F.R. § 292.5(a).

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 afforded two interviews in connection with his LIFE Act application, and on both occasions, the applicant was unable to demonstrate an understanding of ordinary English. On May 3, 2004, the applicant failed both tests, and a notice of intent to deny (NOID) was mailed to the applicant on that same date notifying him of the basic citizenship skills requirements. The exceptions to these requirements were clearly stated, and the applicant was afforded an opportunity to respond to the notice with evidence in support of his eligibility. The applicant failed to respond to the NOID, and appeared for his second test on November 12, 2004. On this date, the applicant failed the English literacy portion of the test. At the time of the interview, the applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). Consequently, the application was denied on March 23, 2005.

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, if he or she meets one of the criteria defined in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). In part, an applicant must establish that he or she meets the following under 8 C.F.R. § 245a.17:

- (2) He or she has a high school diploma or general education development diploma (GED) from a school in the United States; or
- (3) 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.

On appeal, the applicant submits a document in Spanish entitled [REDACTED] dated May 30, 2004, which appears to be a receipt for English Language courses. In addition, cash receipts from the New York Language Center, dated May 30, 2004, June 13, 2004, June 21, 2004 and June 29, 2004 are submitted, although it is unclear what services or classes these receipts represent. Based on these documents and the accompanying affidavits, the applicant urges reconsideration of the denial.

There are several problems with this evidence. First, the "Contrato" is in Spanish and is not accompanied by a translation. Because the petitioner failed to submit certified translations of the document, the AAO cannot

determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

In addition, the proper time for submission of said documentation was at the time of the second interview which, in this matter, was conducted on November 12, 2004. The applicant was advised of this in the NOID, yet failed to present this documentation at the time of the interview. The applicant was put on notice of required evidence and given a reasonable opportunity to provide it for the record before adjudication. The applicant failed to submit it at the second interview and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Even if this documentation had been timely submitted, it would still be insufficient to demonstrate that the applicant had attended or was attending at the time of the second interview a state recognized, accredited learning institution in the United States that provides a course of study for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) with curriculum including at least 40 hours of instruction in English and United States history and government as allowed under 8 C.F.R. § 245a.17(a)(3). The document provided does not provide any confirmation that the course content of the classes in which the applicant was enrolled were for a period of one academic year (or the equivalent thereof according to the standards of the school), or that the school is a state recognized, accredited learning institution as required by 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.