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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
MSC 03 245 65965

Office: ATLANTA

Date:

NOV 28 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:



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.

A handwritten signature in black ink, appearing to read "D. King".

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, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The AAO withdraws the director's decision denying the LIFE application, and remands the application 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, applicant asserts that he believes that this time he will satisfy the basic citizenship skills requirement that he failed on his previous interview. He states that he is "going to take classes with a private teacher who will train me with the history and government of the United States." He requests one more opportunity to reinstate his case and to have the chance to pass the test.

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.

In a November 18, 2004, Notice of Intent to Deny, the director stated that the applicant appeared for an interview on August 4, 2004. The applicant's son accompanied the applicant to the interview to assist as a translator. However, the applicant's son was not proficient in the English language and was unable to assist as a translator. The interview officer requested the assistance of another officer proficient in the Spanish language for assistance with the interview. However, the interviewing officer was unable to determine the applicant's citizenship skills. The director afforded the applicant ninety (90) days to submit evidence indicating why the application should not be denied. The record does not indicate that the applicant submitted any evidence.

In a February 28, 2005, Notice of Decision, the director stated that the applicant failed to overcome the denial grounds. On March 22, 2005, the applicant filed a motion to reopen with fee and supporting brief. The director granted the motion to reopen on August 23, 2005. The record reflects that the applicant also filed a Form I-290B, Notice of Appeal, on March 22, 2005.

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.

As mentioned previously, the applicant was interviewed on August 4, 2004. The interviewing officer was unable to determine the applicant's citizenship skills. However, the record does not indicate that the applicant was given a second interview as required under 8 C.F.R. § 245a.17(b). Therefore, the instant case is remanded for the scheduling of a second interview.

It is noted that, in the alternative, the applicant can also 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).

The applicant must submit the 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 . . ." pursuant to both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3).

Accordingly, this case is remanded for the scheduling of a second interview pursuant to 8 C.F.R. § 245a.17(b). It is noted that the entry of a new decision, if adverse to the applicant, is to be certified to this office for review without the required appeal fee.

ORDER: The director's decision denying the LIFE Act application is withdrawn. 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 Administrative Appeals Office for review.