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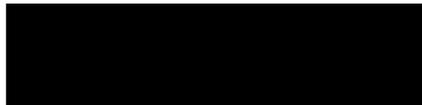
Office: DALLAS

Date:

OCT 01 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, Dallas, Texas, 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 she satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, the applicant asserts, "I have been living in united states since 1982." The applicant states that she has been misled by Citizenship and Immigration Services because she was initially told "all I need is proof that I'm taking history class and that would be my last step." However, at the time of her second interview, the interviewing officer informed her that her application would be denied because she left the United States during 1986. The applicant states, "but I came back in 28 days."

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 48 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 6 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, on May 7, 2004, and again on January 3, 2005. On the both occasions, the director determined that the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history

and government.¹ 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 have met the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act by showing, pursuant to 8 C.F.R. § 245a.17(a), that she:

- (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 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).

At the time of her second interview on January 3, 2005, the applicant presented a registration summary from the Dallas County Community College District, which reflected the applicant was enrolled in ESOL-0031-2001 and ESOL 0041-2002 courses which commenced August 23, 2004.

On appeal, the applicant submitted an additional document from the Dallas County Community College District reflecting the applicant's enrollment in a course that commenced August 23, 2004 and ended December 9, 2004. The applicant claims that this document is evidence of her enrollment in a history/civics class. The applicant's claim, however, is not supported by the record. The course descriptions are for English for Speakers of other Languages in reading, listening and speaking.² While the applicant did provide evidence of enrollment in an English course, said documentation is irrelevant as the applicant's examination indicated she had passed the English literacy portion at the time of her initial interview on May 7, 2004.

The applicant did not present any evidence of enrollment in a course content that includes any instruction on United States history and government 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 her second interview as required by 8 C.F.R. § 245a.17(a)(3).

As previously discussed, the applicant failed to meet the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at her two interviews she failed to demonstrate a minimal knowledge of United States history and government

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 applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

¹ The director erred in her decision as the record contains the applicant's examination taken on May 7, 2004, which reflects that she passed the reading and writing portion of the test, but failed the history/civics test. The applicant's examination test taken on January 3, 2005, reflects that she once again failed the history/civics test.

² See the Dallas County Community College District website www.dcccd.edu.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the district director 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).

At issue is whether the applicant continuously resided in an unlawful status during the requisite period. The director, in her Notice of Intent to Deny, advised the applicant of her entry with a nonimmigrant visa in 1985 and 1986, but did not make a determination in this matter in her Notice of Decision. The AAO will further examine this issue to determine the applicant's eligibility for adjustment to permanent residence under section 1104(c)(2)(B) of the LIFE Act.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The applicant, on her Form I-687 application, listed her absences from the United States from December 1985 to January 1986 and from August 1987 to September 1987. Along with her Form I-687 application, the applicant filed a Form I-690, Application for Waiver of Grounds of Excludability.

The applicant indicated in her affidavit for consideration as a class member under *LULAC* or *CSS* notarized April 30, 1990, that she departed the United States in December 1985 and August 1987 and reentered the United States with a nonimmigrant visitor visa on January 1986 and September 1987, respectively.

The record contains a Form I-94, Arrival/Departure Record, which indicates the applicant entered the United States as a B-2 visitor on September 27, 1987.

The record also contains a copy of the applicant's Pakistan passport, which reveals that on October 11, 1984 and January 15, 1986, the applicant was issued B-2 multiple entry nonimmigrant visas, which expired on January 11, 1985 and July 15, 1986, respectively. The passport contains: 1) a canceled exit stamp from Karachi, Pakistan on January 27, 1986; 2) an exit stamp from Karachi, Pakistan on February 3, 1986; 3) a United States entry stamp on February 4, 1986; and 4) an entry stamp from Karachi, Pakistan on April 5, 1986.

The applicant's assertion that she was absent for only 28 days in 1986 is not supported by the record. Her passport clearly reflects that she did not depart her native country until February 3, 1986. However, because the applicant did not list the exact date of her departure from the United States in December 1985, it cannot be determined that this absence exceeded the 45-day limit for a single absence during the requisite period.

Based on her child's Illinois birth certificate of June 10, 1987, it appears the applicant may have been residing in the United States for a period of time. As such the applicant's reentry into the United States as a nonimmigrant on September 27, 1987, can be inferred she was returning to an unrelinquished unlawful residence.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided: 1) a letter dated May 12, 2004 from a representative of Karimbab Plate Collection Committee in Karachi Pakistan thanking the applicant for her monetary contribution to their institute in 1982 and 1983; 2) a notarized affidavit dated April 21, 2004 from [REDACTED] of North Charleston, South Carolina, who indicated the applicant resided with her from 1982 to January 1986 in Chicago, Illinois; 3) a statement dated May 8, 2004 signed by two individuals with indecipherable names who indicated they have known the applicant since 1982 and attested to the applicant's volunteer services at a church in Chicago; and 4) an Illinois birth certificate for her third child born on June 10, 1987.

The applicant's failure to disclose her April 5, 1986 entry into Pakistan coupled with her statement on appeal to have resided in United States "since 1982," and the record containing no evidence to establish an entry and residence prior to January 1, 1982 are strong indications that the applicant was either not in the United States prior to January 1, 1982 or may have been outside the United States beyond the period of time allowed by regulation.

Based on the evidence in this case, the AAO determines that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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