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U.S. Citizenship
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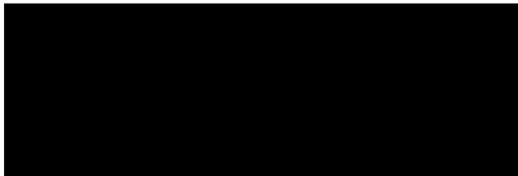
Office: DALLAS

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:



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 he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel asserts that the applicant has completed a citizenship basic course at Mountain View College in Dallas, Texas, and continues to take English classes as well as additional citizenship classes.

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 33 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 (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 his LIFE application, on October 14, 2003, and again on June 28, 2004. On the both occasions, the applicant failed to 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 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 he:

- (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).

On July 14, 2004, the director issued a Notice of Intent to Deny, which advised the applicant of his failure to pass the English literacy and United States history and government tests. The applicant was given the opportunity to submit evidence that would overcome the basis for denial of his application. According to the director, in her Notice of Decision, the applicant did not respond to this notice.

The record, however, reflects that a response was received and will be considered on appeal. The applicant submitted a letter dated June 23, 2004 from [REDACTED] director of Center of Adult Education, Inc. in Dallas, Texas, who indicated the applicant would be attending Workforce English as a Second Language course commencing June 28, 2004. The applicant also submitted a letter dated June 25, 2004 from [REDACTED] an English as a Second Language (ESL) advisor of Mountain View College in Dallas, Texas. Mr. [REDACTED] asserted the applicant was currently enrolled in a 50-hour English course commencing July 26, 2004 and will be attending a six-hour citizenship basic course on July 31, 2004.

On appeal, counsel submits a duplicate letter dated June 23, 2004 from [REDACTED] along with documentation from the Dallas County Community College District, which indicates on June 24, 2004, the applicant had enrolled in English as a Second Language and citizenship basics courses commencing July 26, 2004 and July 31, 2004, respectively.

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, documentation from a state recognized, accredited learning institution should have been submitted to Citizenship and Immigration Services prior to or at the time of the applicant's second interview on June 28, 2004. The applicant failed to meet this requirement as the documentation from Ms. [REDACTED] and the Dallas County Community College District was presented *subsequent to* the applicant's interview.

On appeal, counsel asserts the applicant has met the regulatory requirement of 8 C.F.R. § 245a.17(a)(3) because he has completed the citizenship basics course at Mountain View College. Counsel, however, has not provided any evidence to support his assertion. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Assuming, arguendo, counsel had provided evidence of the completed citizenship basics course from Mountain View College, the applicant still would not qualify for the benefit being sought as the documentation would have been presented subsequent to the applicant's interview.

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 his two interviews he did not demonstrate a minimal understanding of the English language and 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.

Finally, the record contains a FBI report dated June 30, 2004, which indicates that on March 29, 1997 and October 3, 1997, the applicant was arrested by the United States Border Patrol in Del Rio, Texas for illegal entry into the United States. The applicant was convicted of illegal entry by the United States Magistrate in Del Rio, Texas on March 31, 1997 and January 26, 1998, respectively. The record also contains a Form I-205, Warrant of Removal/Deportation, which indicates the applicant was deported on August 21, 1997. Accordingly, the applicant is inadmissible under section 212(a)(9)(A) of the Immigration and Nationality Act (the Act) for having returned to the United States, without permission from the Attorney General, within five years after deportation. However, such grounds of inadmissibility may be waived pursuant to section 245A(d)(2) of the Act; 8.C.F.R. § 245a.18(c).

Furthermore, as the final court dispositions were not incorporated into record, it is not known if the arrest of October 3, 1997 resulted in a felony conviction as the applicant reentered after deportation. A felony conviction would render the applicant ineligible for the benefit being sought. Section 1104(c)(2)(D)(ii) of the Act; 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1).

Given his failure to meet the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i) of the LIFE Act, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act, and therefore the issuance of an application for waiver of inadmissibility is moot.

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