

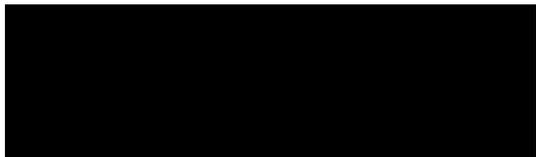
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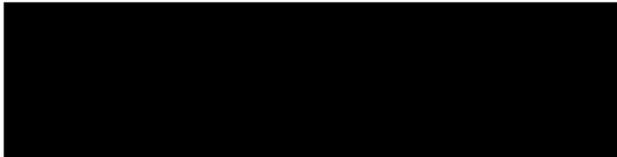
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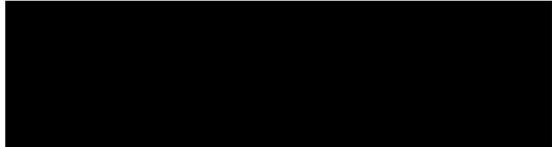
Applicant:



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 states the applicant has been attending school to learn the English language since April 2004. Counsel contends that the applicant was not able to obtain evidence of attendance until he had attended over 12 hours of instruction. Counsel asserts that the applicant did not begin classes until April because he "understood from before the first interview that a medical statement could excuse me from knowing English." Counsel asserts that the applicant had attended other classes that were not accredited.

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 49 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 June 16, 2003, and again on April 23, 2004. According to the director, on the both occasions, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and

government.¹ 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).

In response to a Notice of Intent to Deny issued on May 5, 2004, the applicant submitted a letter dated May 27, 2004 from [REDACTED] adult education program director of Dallas Independent School District. Mr. [REDACTED] indicated the applicant was enrolled in a literacy/civics/citizenship class for the 2003-2004 school year, and had completed 12 hours of instruction. [REDACTED] indicated students are officially enrolled after 12 hours of instruction and with a baseline assessment score.

On appeal, counsel submits a copy of [REDACTED] letter along with:

- A Certificate of Achievement dated June 26, 2004 from the Dallas Independent School District for a citizenship course.
- A Certificate of Achievement dated May 28, 2003 from the Dallas Independent School District for an English as a Second Language (ESL) course.
- An ESL student data form dated March 3, 2003.
- A letter dated May 8, 2005 from [REDACTED] who indicated the applicant enrolled in an EL/Civics class on July 10, 2004 and had attended 72 hours of instruction.

The Certificate of Achievement for the ESL course raises questions to its authenticity as neither letter from [REDACTED] indicates the applicant was enrolled in an ESL course in 2003. The ESL student data form is only an assessment of the applicant's ability to learn and/or understand the English language. The form does not indicate the applicant was enrolled in a course.

Counsel also submits a Form N-648, Medical Certification for Disability Exception, signed by [REDACTED] of Healthcare Clinics of Dallas Texas on September 30, 2003. The doctor's clinical diagnosis of applicant's impairment indicates the applicant "has never had any formal education in English general knowledge or history. He has been a laborer, holding simple jobs. His English I.Q. is severely deficient in written and mathematics." Based on the examination of the applicant, the doctor's concluded, "[d]ue to any useful formal training in written language or history, this applicant is unable to perform the language or history test portions of I.N.S. Department in English language."

¹ The director erred in her decision as the record contains the applicant's examination taken on April 23, 2004, which reflects that the applicant passed the history/civics and reading portion of the test, but failed the writing test.

The submission of the Form N-648 raises questions to its credibility as it is unclear if this document was signed on September 30, 2003, why it was not presented on or before the applicant's second interview. Nevertheless, the doctor did not state his qualification for making this diagnosis and did not specifically address the applicant's inability to learn the English and/or United States history and civics. The doctor only indicated the applicant was unable to take the English and history portions of the test. As previously noted, the applicant did pass the history/civics and reading portions of the test on April 23, 2004. The lack of an education in the English language is not a sufficient reason to be exempt from the requirement of 8 C.F.R. § 245a.17.

Counsel claims that the applicant did not enroll in a course of study until April 2004. However, the letters from Dallas Independent School District do not support counsel's claim. [REDACTED] in his initial letter, indicated the applicant had completed 12 hours of instruction, but failed to list the actual date the applicant's enrollment commenced. Nevertheless, 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 April 23, 2004. The applicant failed to meet this requirement as the documentation from the Dallas Independent School District was 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.

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.

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