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U.S. Citizenship  
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FILE:

MSC 02 252 60934

Office: DALLAS

Date:

OCT 30 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. 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.

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 sustained.

The district director denied the application because the applicant failed to demonstrate knowledge of English and of the government and history of the United States.

On appeal, the applicant asserts that she submitted additional evidence on or about February 6, 2004, which was not taken in to consideration.

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 is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does she 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 (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).

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. The "citizenship skills" requirement of 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).

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must submit 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 . . . .”

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 interviewed twice in connection with her LIFE Act application, on February 14, 2003, and again on January 6, 2004. On both occasions, the applicant failed to demonstrate a minimal understanding of ordinary English. The applicant does not dispute this on appeal. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). The applicant does not have 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 a February 12, 2004, Notice of Decision, the director stated that the applicant provided no new evidence in response to the director’s Notice of Intent to Deny dated January 8, 2004. On appeal, the applicant states that she submitted evidence in response to the Notice of Intent. As proof, the applicant submitted a copy of a return receipt addressed to U.S. Citizenship and Immigration Services and stamped as received on February 6, 2004. The return receipt is labeled “appeal of intent” on the opposite side. The record reflects that no new evidence was received.

The record contains the following relevant evidence:

- 1) A January 27, 2003, Dallas County Community College District registration summary, which indicates that the applicant was enrolled in ESL: Pre Literacy Level course beginning on February 15, 2003.
- 2) A copy of a Dallas County Community College District official cash receipt for \$120.00 dated January 27, 2003.
- 3) A December 10, 2003, letter from [REDACTED] and [REDACTED] adult education program director and instructional coordinator, respectively, of the Dallas Independent School District.

In their letter, [REDACTED] and [REDACTED] stated that the applicant was currently enrolled in a Literacy Civics/Citizenship class. They stated that the applicant enrolled on July 19, 2003, and the class meets every Saturday morning from 10 a.m. to 1 p.m. [REDACTED] and [REDACTED] certified the applicant's attendance at Dallas County Community College, a state recognized, accredited learning institution in the United States. They also stated that the course of study at Dallas County Community College is for one year and the curriculum includes at least 40 hours of instruction in English and United States history and government. [REDACTED] and [REDACTED] stated that students are officially enrolled after 12 hours of instruction with a baseline assessment score. They further stated that the applicant had completed 51 hours of instruction. The applicant established that she has met the requirements of the alternative "basic citizenship" skills pursuant to 8 C.F.R. § 245a.17(a)(3). The record reflects that this evidence was submitted prior to the January 6, 2004, second interview.

Therefore, the applicant does satisfy the alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the AAO will overturn the director's decision and find that the applicant is eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

**ORDER:** The appeal is sustained.