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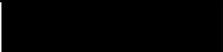
U.S. Citizenship  
and Immigration  
Services

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FILE:



MSC 02 253 60423

Office: NEW YORK

Date: SEP 07 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. 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 be "Robert P. Wiemann".

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, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to appear for his second interview and therefore failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, the applicant states that he failed to appear for his second interview because he “lack[ed] the proper information,” and that as a result of a lightning strike that killed his mother and injured his brother, he is “not capable of retain[ing] any data for a long period of time.” The applicant submits additional documentation in support of the appeal.

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 six 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 on April 22, 2004, the director notified the applicant that he had failed the first test of his citizenship skills, and that he was scheduled for another test on October 29, 2004. The Notice of Intent to Deny (NOID) informed the applicant that “[f]ailure to appear for your final re-examination will result in the denial of your application based solely on 8 C.F.R. 245a.17(b).” The record further reflects that the applicant failed to appear for his scheduled interview.

On appeal, the applicant states that he failed to appear for his second interview because he lacked “the proper information.” The applicant does not explain the nature of the information he lacked or how that lack of information prevented him from appearing for his second interview.

The applicant also asserts for the first time on appeal that he is incapable of learning and therefore is exempt from the demonstration of citizenship skills required by the LIFE Act.

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.

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 record reflects that the applicant was interviewed in connection with his LIFE application on April 22, 2004 and failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. The applicant failed to appear for his second scheduled interview. Additionally, the applicant provided no evidence that he passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

The applicant, however, could still meet the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act, if he meets one of the criteria defined in 8 C.F.R. §§ 245a.17(a)(2) and (3). In part, an applicant must establish that he meets the following under 8 C.F.R. § 245a.17:

- (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 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.

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). Further, the applicant submitted no evidence that he had attended or was attending a state recognized, accredited learning institution in the United States. Additionally, 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. The applicant submitted no such documentation.

The regulation at 8 C.F.R. § 245a.17(a)(3) also provides that an applicant for LIFE Legalization can qualify for the exceptions listed under 8 C.F.R. §§ 312.1(b)(3) and 312.2(b). Section 312.2(b) provides:

- (3) The requirements of paragraph (a) of this section shall not apply to any person who is unable, because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language as noted in paragraph (a) of this section.

On appeal, the applicant alleges for the first time that he suffers from a medical condition that prevents him from learning and therefore he should be excepted from the citizenship requirements of the LIFE Act.

The applicant states that when he was 14 years of age, lightning killed his mother and struck his brother. The applicant stated that afterwards, he could not retain information for a long period of time and dropped out of school in the 8<sup>th</sup> grade.

On appeal, the applicant submits a Form N-648, Medical Certification for Disability Exceptions, signed by [REDACTED] on May 21, 2005. [REDACTED] identified himself as a general practitioner and stated that he saw the applicant for the first time on May 19, 2005. No follow-up treatment was noted. Dr. [REDACTED] stated that the applicant was not under the care of any other physician. According to [REDACTED] the applicant, as a result of his mother's death, suffers from depression and a loss of memory. [REDACTED] concluded that the applicant had a history of psychological trauma and suffered from psychogenic amnesia. [REDACTED] did not explain how this condition impacted upon the applicant's ability to learn and/or demonstrate knowledge of English, U.S. history and government, or how his training and experience qualified him to make such a diagnosis. See 8 C.F.R. § 312.2(b). Accordingly, the applicant's evidence does not establish that he suffers from a mental or physical condition that impairs his ability to demonstrate the citizenship skills required by the LIFE Act.

However, 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 was 59 years old at the time he took the basic citizenship skills test and therefore does not qualify for the age exception of section 1104(c)(2)(E)(ii) of the LIFE Act.

Further, the regulation at 8 C.F.R. § 245a.1(v) defines developmentally disabled as follows:

The term *developmental disability* means a severe, chronic disability of a person, which:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning (iv) mobility, (v) self direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
- (5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated

The applicant submitted no documentation to establish that he is developmentally disabled as defined in 8 C.F.R. § 245a.1(v), as he has not established that he suffers functional limitations in three or more of areas of life activity or that he needs individually planned treatment of care.

Accordingly, 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, and is not eligible for either of the exceptions permitted by

section 1104(c)(2)(E)(ii) of the LIFE Act.. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

The director also considered the applicant's eligibility for adjustment of status to that of a temporary resident pursuant to regulation at 8 C.F.R. § 245a.6, and determined that he was also ineligible for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A). We concur with the director that the evidence of record does not establish the applicant's eligibility for adjustment of status pursuant of section 245A of the Act.

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