



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] MSC 02 058 61760

Office: NEW YORK

Date: SEP 07 2007

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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.

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 case will be remanded for further action and consideration.

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, counsel states that the applicant "has medical conditions which constitute exception and/or waiver of the exam requires." 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 February 26, 2004, the director notified the applicant that she had failed the first test of her citizenship skills, and that she was scheduled for another test on September 24, 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 appeared for her scheduled interview.

The regulation at 8 C.F.R. § 245a.20(a)(2) provides that when an adverse decision is proposed, Citizenship and Immigration Services shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted 30 days from the date of the notice in which to respond to the notice of intent to deny.

The Notice of Decision (NOD) informed the applicant that her application was denied "for the reasons stated, in the NOID." However, the only basis for the proposed denial stated in the NOID was for failure to appear for a second interview. As the applicant attended her scheduled second interview, she overcame the proposed ground for denial set forth in the NOID. However, it is clear that the basis of the director's denial was the applicant's failure to satisfy the basic citizenship skills requirement of the LIFE Act. The record does not reflect that, prior to issuing her NOD denying the application for this reason, the director issued a NOID advising the applicant of the reasons for her subsequent proposed denial of her application. Nonetheless, as we find that the applicant has submitted sufficient evidence to establish that she qualifies for waiver of the citizenship skills requirement, we find that the director's failure to issue a NOID notifying the applicant that the application would be denied because she failed the second civics exam constitutes harmless error.

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 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)(I) and (2).

The record reflects that the applicant was interviewed twice in connection with her LIFE application, first on February 26, 2004 and again on September 24, 2004. On both occasions, the applicant failed to demonstrate a minimal understanding of English. 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 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 she 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 she suffers from a medical condition that prevents her from learning and therefore she should be excepted from the citizenship requirements of the LIFE Act.

The applicant submits a Form N-648, Medical Certification for Disability Exceptions, signed by [REDACTED] on June 18, 2005. [REDACTED] identified himself as a psychiatrist who saw the applicant for the first time on June 7, 2005, with follow-up appointments on June 11 and 16, 2005. [REDACTED] diagnosed the applicant with learning disorders including symptoms of dyslexia, panic disorder with agoraphobia and posttraumatic stress disorder. [REDACTED] stated that the applicant's panic disorder and posttraumatic stress disorder originated in 1995, when the applicant and her husband were assaulted at gunpoint.

[REDACTED] concluded that the applicant "is able to copy words, yet has difficulty spelling/comprehending what she writes in Spanish/English" and that her "[r]eading comprehension is better than written expression even in her native language." The record contains no documentation indicating that [REDACTED] conclusions regarding the applicant's inability to learn and/or demonstrate English and basic knowledge of United States civics are in error. Accordingly, the applicant has established that she meets the exception of 8 C.F.R. §312.1(b)(3).

However, the application may not be approved as the record now stands. The applicant has not submitted sufficient evidence to establish that she unlawfully resided continuously in the United States from prior to January 1, 1982 to May 4, 1988.

On remand, the director shall address the applicant's evidence of residency. The director shall issue a NOID pursuant to 8 C.F.R. § 245a.20(a)(2) and a new NOD. If the new decision is adverse, it shall be certified to this office.

ORDER: This matter is remanded for further action and consideration pursuant to the above.