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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: NEW YORK

Date:

SEP 12 2007

MSC 02 236 64773

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. 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 (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that she satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel asserts that the applicant has demonstrated a minimum understanding of the English language, as she was able to communicate with the interviewing officer. Counsel further asserts that the applicant does not know why she did not pass the citizenship skills test.

Counsel indicated on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, however, more than twenty-nine months after the appeal was filed, no further documentation has been received by the AAO. Counsel confirmed by facsimile transmission dated August 27, 2004, that he did not submit a brief or additional documentation. Therefore, the record will be considered complete as presently constituted.

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 March 17, 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 17, 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 thirty days from the date of the notice in which to respond to the NOID.

The Notice of Decision (NOD) informed the applicant that her application was denied "for the reasons stated, in the Notice of Intent to Deny." 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 his application. Nonetheless, 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.

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 46 years old at the time she took the basic citizenship skills test and provided no evidence to establish that she 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 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)(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 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 the applicant was interviewed twice in connection with her LIFE application, first on March 17, 2004 and again on September 17, 2004. The record reflects that on both occasions, the applicant failed the citizenship test given by the interviewing officer, and thus 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).

On appeal, counsel asks for “a full description of what is for you a ‘minimal understanding of the English Language’ or what measure do we have to consider to qualify and to pass the basis citizenship skills requirements under Section 245A of the Act.” As discussed above, the regulation at 8 C.F.R. § 245a.3(b)(4)(iii)(A)(1) provides that in addition to speaking and understanding English during the course of the interview, the applicant must also answer questions administered from approved citizenship training materials, which are available to the applicant. Documentation in the record reflects that, during her last interview, the applicant failed the reading and writing portions of the citizenship skills test.

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.

Furthermore, 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 (CIS) prior to or at the time of the applicant's second interview on March 4, 2005. Therefore, had the applicant attended a state recognized, accredited learning institution, she still would not qualify for the benefit being sought as the documentation from such an institution was not presented prior to the applicant's second interview as required by 8 C.F.R. § 245a.17(a)(3).

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 neither of her two interviews did she 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.

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 she 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).

Counsel asserts on appeal that the applicant has established her eligibility under section 245A of the Act, as she timely filed an application for class membership and has provided proof of her continued residency in the United States from prior to January 1, 1982 through May 4, 1988.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.2(b).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant’s claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Although CIS regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In a form to determine class membership, which she signed under penalty of perjury, the applicant stated that she first arrived in the United States on March 17, 1981, when she crossed the border without inspection. On her Form I-687, Application for Status as a Temporary Resident, which she signed under penalty of perjury on November 8, 1990, the applicant stated that she worked for [REDACTED] (no address provided) as a domestic from 1981 to 1985, and as a housekeeper for [REDACTED] (no city or state provided) from 1988 to the date of the Form I-687 application. The applicant also stated that she lived at the following addresses in New York: from 1981 to 1985 at [REDACTED] Woodside; from 1986 to 1988 at [REDACTED] Far Rockaway; and from 1988 to 1990, [REDACTED] in Jamaica. On her Form G-325, Biographic Information, which she signed under penalty on perjury in June 2001, the applicant stated that she had lived at [REDACTED] in Ozone Park, New York from March 1981.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. An undated notarized letter from [REDACTED] in which she certified that the applicant “worked as a domestic for the period between 1981 and 1985.” [REDACTED] did not state how she dated the applicant’s employment or the applicant’s address at the time she worked for her.
2. An undated notarized statement from [REDACTED] in which she stated that she had known the applicant since 1981. [REDACTED] stated that she met the applicant as a “partner of work;”

however, it is unclear as to the meaning of this statement. We note that the applicant stated that she worked as a domestic for [REDACTED] from 1981 to 1985. There is no indication in the record that [REDACTED] employed other domestics.

3. An undated notarized statement, also signed by [REDACTED] in which she stated that the applicant rented an apartment in her house from 1981 to 1985. [REDACTED] listed her address as [REDACTED] in Woodside, New York. The applicant submitted no documentation, such as rent receipts, lease agreements or similar documentary evidence, to corroborate that either she or [REDACTED] occupied this address during the stated time frame. In a February 17, 2004 notarized letter, [REDACTED] (now [REDACTED]), attested that the applicant had lived in the United States since prior to January 1, 1982. [REDACTED] stated that she could attest to this fact because they have been good friends since that time.
4. A February 17, 2004 notarized letter from [REDACTED] in which he stated that he had known the applicant since 1983, and that they had been friends since that time. [REDACTED] did not state the circumstances of his initial acquaintance with the applicant or how he dated his relationship with her.
5. A copy of an undated letter from [REDACTED] in which he certified that the applicant rented an apartment in his house from 1986 to 1988. [REDACTED] listed his address as [REDACTED] in Far Rockaway, New York. The applicant also submitted September 4, 1986, November 3, 1986, and March 4, 1987 rental receipts signed by [REDACTED] however, the receipts do not identify a particular apartment or address. We note that the applicant stated on her Form I-687 application that she began living at [REDACTED] in 1988. [REDACTED] did not indicate that he had resided at another address during the relevant time frame, and the applicant submitted no documentary evidence to corroborate that she or [REDACTED] resided at [REDACTED] or at [REDACTED] in Woodside, the address that she stated she lived from 1986 to 1988. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).
6. A November 24, 1986 notice regarding the applicant's daughter from [REDACTED] in Jamaica, New York. The applicant also submitted a January 14, 1991 letter from [REDACTED] Pupil Personnel Secretary for P.S. 117, in which she stated that the applicant's daughter had been a student at the school since September 6, 1986.
7. A copy of a January 4, 1988 Avianca Airlines ticket receipt, showing the applicant booked on a one-way flight from New York to Cali, with a flight date of January 13. The applicant also submitted an April 11, 1992 notarized statement from [REDACTED] in which he stated that he took the applicant to John F. Kennedy Airport for her trip to Colombia on January 13, 1988.
8. An undated notarized statement from [REDACTED] in which he stated that the applicant was his customer and that he had personally known her since 1988. [REDACTED] did not state when in 1988 he became acquainted with the applicant.

The applicant also submitted an October 25, 1989 letter from the Presentation of the Blessed Virgin Mary R. C. Church in Jamaica, New York, advising that the applicant was registered with the church. The

accompanying registration card indicated that the applicant registered with the church on October 25, 1989, and indicated at that time that she had lived at [REDACTED] in Jamaica for three years. We note that on the applicant's Form I-687 application, she stated that she moved to this address in 1988.

The applicant also submitted undated notarized statements from [REDACTED] and [REDACTED] in which they stated that they had known the applicant for several years. However, neither stated specifically when he or she met the applicant or the circumstances regarding their first meeting. [REDACTED] also certified in a June 8, 1991 undated notarized letter that the applicant worked for him from 1988 "to the present date;" however, [REDACTED] did not state when in 1988 the applicant began working for him.

Other documentation submitted by the applicant is subsequent to the qualifying period and therefore is not probative in establishing continued residency in the United States from prior to January 1, 1982 to May 4, 1988.

The applicant submitted inconsistent statements regarding her places residence in the United States during the qualifying period. While the school records of the applicant's daughter is evidence of her residency in the United States in 1986, the documentation submitted by the applicant to establish her residency prior to 1986 consist of vague uncorroborated statements and do not establish by a preponderance of the evidence that the applicant resided in the United States prior to that date.

Accordingly, the applicant has not established that she resided continuously in the United States from prior to January 1, 1982 through May 4, 1988, and therefore has not established eligibility under section 245A of the Act.

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