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FILE: [REDACTED]
MSC-03-249-64412

Office: DALLAS, TX

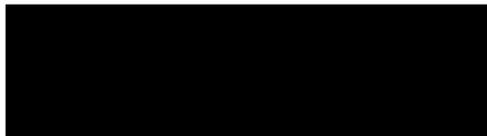
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SEP 13 2007

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:



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, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Dallas, TX, and is now before the Administrative Appeals Office (AAO) on appeal. The AAO affirms the director's decision denying the LIFE Act application, and remands the case for further action and consideration.

In her Notice of Intent to Deny (NOID), the director stated that the applicant did not demonstrate that he possessed a minimal understanding of ordinary English or knowledge and understanding of the history and government of the United States and therefore he did not meet the requirements of section 1104(c)(2)(E) of the LIFE Act, INA § 312(a) and 8 C.F.R. § 245a.17 which specify that applicants must possess knowledge and understanding in both of these areas in order to adjust status unless an exception under 8 C.F.R. § 245a.17(c) applies. The director noted that the applicant was given two opportunities to demonstrate this understanding and knowledge and failed to do so on both occasions. It is noted that exceptions as defined under 8 C.F.R. § 245a.17(c) do not apply to this applicant, as he is not over sixty-five (65) years of age and he has not indicated that he is developmentally disabled as defined under 8 C.F.R. § 245a.1(v). Pursuant to 8 C.F.R. § 245a.20(a)(2) the director afforded the applicant thirty (30) days from the date of her NOID to submit evidence in support of his application. In her decision, the director noted that no additional evidence was submitted by the applicant in response to her NOID. The director therefore denied the application because the applicant 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's attorney submits a Form I-290B on which he states the applicant is currently attending English classes. He refers to paragraphs one (1) and two (2) of page three (3) of the instructions for filing a Form I-485 which states that instead of demonstrating a minimal understanding of ordinary English and a knowledge and understanding of United States history and government, an applicant can submit a certification on letterhead stationary from a state recognized accredited learning institution in the United States that affirms that an applicant is attending or has attended such classes. The applicant also submits a letter on official letterhead stationary from Quintanilla Middle School dated December 6, 2004, that certifies that he is currently enrolled in English as a Second Language classes and that once the school is assigned a citizenship teacher, the applicant will also attend a citizenship class. Also submitted is a form from the Dallas Independent School District which indicates that the applicant has registered in English and United States government and history classes. This form indicates that the applicant had completed forty-three (43) hours of classes as of the date the form was submitted, on September 20, 2004.

It is noted that the applicant's attorney has accurately represented a portion of the instructions for filing a Form I-485. However, paragraph two (2) of page three (3) of the instructions for filing a Form I-485 goes on to reflect the language found in both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) which specifies 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”

Neither the applicant nor his attorney have indicated that the applicant submitted the above evidence before or at the time of his second interview. This requirement of a mandatory time frame is clearly stated in the regulations at 8 C.F.R. § 245a.17(a)(3). The applicant is found not to have complied with this time frame. Therefore, the AAO will not disturb the director’s decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

Although the director found the applicant ineligible for permanent resident status under section 1104 of the LIFE Act, the director failed to consider the applicant’s eligibility for adjustment of status to that of a temporary resident. The regulation at 8 C.F.R. § 245a.6 provides, in pertinent part:

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director *shall* consider whether the eligible alien has established eligibility 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).

(Emphasis added.)

Accordingly, this case is remanded for a determination as to the applicant’s eligibility for adjustment of status to that of a temporary resident pursuant to 8 C.F.R. § 245a.6.

ORDER: The director’s decision denying the LIFE Act application is affirmed. The application is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the applicant, is to be certified to the Administrative Appeals Office for review.