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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC-02-001-65636

Office: NEW YORK Date: APR 02 2008

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 on your appeal. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The decision is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further consideration and action.

On April 21, 2006, the director denied the application because the applicant had failed to establish that she satisfied the “basic citizenship skills” requirement under section 1104(c)(2)(E) of the LIFE Act. The director found specifically,

Your interview began on July 18<sup>th</sup>, 2002 with the administration of the prescribed oath, which you were unable to repeat. You were unable to read, write and speak English. You were re-scheduled for another interview for June 2<sup>nd</sup>, 2004 to be tested on your ability to read, speak and write words in ordinary usage in the English language. Your Attorney was present at the interview when you claimed under oath that you do not read, speak and write the English language. On[ce] again you were rescheduled for another interview for July 16<sup>th</sup>, 2004 . . . . You were again tested on your ability to read, speak and write words in ordinary usage in the English language. Your Attorney was present at the time of the interview when you claimed under oath that you do not read, speak and write the English language.

On appeal, the applicant states that the director erred in denying the application because she provided sufficient evidence as requested and appeared at all of her interviews. She also claims that, contrary to the director’s findings, (1) she was not interviewed on July 16, 2004 because the Citizenship and Immigration Services (CIS) adjudicator was upset that the applicant had contacted a congressional representative to inquire about her case and refused to conduct the interview; and (2) her attorney was not present. She also notes that the time between her interview appointments, from June 2, 2004 to July 16, 2004, was unreasonably short.

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding 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 [Secretary of Homeland Security]) 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 Secretary of Homeland Security may waive all or part of the above requirements for applicants who are at least 65 years of age or who are developmentally disabled. See 8 C.F.R. § 245a.17(c).

An applicant may establish that he or she has met the requirements of section 312(a) of the Immigration and Nationality Act (Act) by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and

understanding of the fundamentals of the history and of the principles and form of government of the United States. 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 – 312.3.

An applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. 8 C.F.R. § 245a.17(a)(2).

Finally, an applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by establishing that:

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. The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution 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 applicant's name and A-number must appear on any such evidence submitted).

8 C.F.R. § 245a.17(a)(3).

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after six months (or earlier at the request of the applicant) to pass the required tests or to submit the evidence described above. 8 C.F.R. § 245a.17(b).

The administrative record in this case shows that appointment letters were sent to the applicant for interviews scheduled on July 18, 2002, June 2, 2004 and July 16, 2004. In each case, the appointment letter contained the following language: "On your scheduled appointment, you must be prepared to demonstrate a minimal understanding of the English language and History, and at the same time, an Officer of the USINS will be giving you a test. In order not to take the test, the applicant must submit a Certificate of Satisfactory Pursuit, GED, High School or College Transcript." However, the record contains no indication that the applicant was ever given the opportunity to take a test or submit evidence that she has otherwise met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act..

The record contains the following documents that are relevant to this decision:

A letter dated August 13, 2002 from the office of Representative Charles B. Rangel to the Congressional Liaison Supervisor for the Immigration and Naturalization Service (now CIS) in New York. The letter states that the applicant has sought assistance from the Congressional Office and that she would like information regarding the status of her case and is requesting that it be adjudicated.

- A response letter dated August 28, 2002 from the District Adjudications Officer (DAO) with the Legalization Unit in New York who was handling the applicant's case. It is addressed to the Hon. Charles B. Rangel. The letter states, in pertinent part, that "[u]nfortunately, because of the volume of appointment [sic] [the applicant] will be receiving another appointment letter as soon as possible because [the applicant] had an appointment on July 18, 2002, under the [LIFE Act]."
- A reminder of the pending request for assistance, sent by facsimile from Congressman Rangel's office, dated December 9, 2002, and a second response letter to Congressman Rangel from the DAO, dated December 11, 2002. The DAO's letter explained that the applicant's permanent resident application remained pending because of the volume of applications and that she would receive a scheduled appointment for an interview as soon as possible.
- A third request for information from Congressman Rangel's office, dated March 17, 2004, regarding the status of the applicant's case and "requesting on behalf of the applicant that she be rescheduled before the June 30, 2004 deadline"<sup>1</sup> and a third response letter from the DAO repeating that the applicant would receive another scheduled appointment for an interview as soon as possible and noting for the first time that CIS records "show that [the applicant] applied for permanent residence and at the time of the appointment [she] could not speak, read and write English."

The record also contains the three appointment letters, noted above, that were sent to the applicant for interviews scheduled on July 18, 2002, June 2, 2004 and July 16, 2004. Regarding the 2002 appointment, there is no evidence of any interaction between the applicant and the DAO or any other official. On the other two dates, the record contains a "Declaration" form. The form contains the following language: "I do solemnly swear or affirm the following: Part (I) that [the applicant] from D.R. born on 06-23-1950 swore under oath that you [sic] know how to read, speak, and write English and that you are prepared for the interview." Part (I) is followed by spaces for signatures by the applicant, an attorney "attesting to the Interview" and the "Legalization Officer." Part (II) begins, "I, [the applicant], do not read, write and speak English, please reschedule the interview." This is followed by spaces for the applicant's and attorney's signatures. On the form dated June 2, 2004, the applicant and the legalization officer signed under Part (I); and the attorney signed under Part II; on the form dated July 16, 2004, only the applicant signed, this time under Part (II).

Part (I) of the Declaration form, as described above, is virtually incomprehensible, as it asks the applicant to swear that the applicant "swore . . . that you know . . . English and that you are prepared for the interview." Moreover, on June 2, 2004, the applicant signed that statement while her attorney signed the statement at Part (II) of the same form indicating that the applicant did not speak English and requesting that the interview be rescheduled. The Declaration form is confusing with or without signatures, and the one signed on June 2, 2004 also contains material inconsistencies. In neither case is there any indication that the form was translated to the applicant or that she understood the contents. These forms are not accompanied by any tests

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<sup>1</sup> The applicant appears to have misunderstood that the filing deadline of June 30, 2004 for LIFE Act applicants was relevant to her pending status.

or interview notes that would support a conclusion that any interview actually took place. The record, therefore, supports the applicant's claim that she was not interviewed on July 16, 2004.

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after six months (or earlier at the request of the applicant) to pass the required tests or to submit appropriate evidence. 8 C.F.R. § 245a.17(b). In this case, two interviews were scheduled less than two months apart. Although the applicant had requested that her case be adjudicated before the "June 30, 2004 deadline," this request was made prior to any interview and under the misconception that there was an adjudication deadline. It cannot be interpreted as a request for a shorter time between tests. The record, therefore, also supports the applicant's claim and that she was not given sufficient time between appointments.

As an alternative to taking the tests noted above, the applicant may submit evidence of a high school diploma or GED from a school in the United States; or submit evidence that she has attended or is attending a state-recognized, accredited learning institution in the United States, following a course of study which spans an academic year and that includes 40 hours of instruction in English and United States history and government. 8 C.F.R. § 245a.17(b).

The record in this case indicates that an insufficient length of time was provided between interview dates. More importantly, however, the record is not clear as to whether any interviews were conducted or that the applicant was given any examinations or the opportunity to present the evidence noted above. The applicant shall therefore be given the opportunities to pass the required tests and/or to submit the relevant evidence, as prescribed at 8 C.F.R. § 245a.17(b).

**ORDER:** The April 21, 2006 decision of the director is withdrawn. The application is remanded to the director to provide the applicant with the required interviews and examinations and for any other further action in accordance with the preceding discussion. The director shall issue a new decision that, if adverse to the applicant, is to be certified to the AAO for review.