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U.S. Citizenship
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FILE:



MSC 01 338 61206

Office: HOUSTON, TEXAS

Date: **APR 08 2008**

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in cursive script, appearing to read "R. Wiemann".

for 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 (director) in Houston, Texas. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director 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 counsel states that the applicant enrolled in a two-month citizenship preparation course at Houston Community College in the summer of 2005, and submits supporting documentation.

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 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 who are developmentally disabled. *See also* 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. *See* 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 and 312.2.

An applicant may also establish that he or she has met the requirements of section 312(a) of the Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2).

Finally, an applicant may establish that he or she has met the requirements of section 312(a) of the Act by providing evidence that he or she has attended or is attending a state recognized, accredited learning institution in the United States, following a course of study which spans one academic year and that includes 40 hours of instruction in English and United States history and government. The

applicant may provide documentation of such on the letterhead stationery of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3).

The 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 6 months: to pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit evidence that he or 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. *See* 8 C.F.R. § 245a.17(b).

On September 3, 2001, the applicant filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On October 26, 2004, the applicant was interviewed in connection with his LIFE Act application. During the examination portion of the interview he passed the tests of U.S. history and government, but failed to demonstrate a basic understanding of ordinary English. The applicant was given notice that he would have another opportunity to test his English language ability after six months.

On June 15, 2005, the applicant was interviewed for the second time. Once again he failed to demonstrate a basic understanding of ordinary English.

On June 16, 2005, therefore, the director issued the applicant a notice of intent to deny (NOID), giving the applicant 30 days to rebut and/or submit additional evidence. The applicant responded by submitting an enrollment receipt from the Houston Community College System (HCCS) indicating that the applicant had registered for a 40-hour summer course on citizenship preparation that ran from July 9 to September 10, 2005.

On July 29, 2005, the director denied the application on the ground that the evidence submitted in response to the NOID had failed to overcome the ground for denial.

On appeal counsel submits a letter from an official of the HCCS, dated August 22, 2005, stating that the course in which the applicant was enrolled in the summer of 2005 was for non-native English speakers, focused on the oral component of the naturalization test, and also included the study of U.S. history and government, the judicial system, institutions, and culture. The letter indicated that the applicant had completed seven of the ten class sessions and would receive a certificate upon completion of the course, although no such certificate has been submitted for the record. According to counsel, the foregoing evidence that the applicant was attending the citizenship preparation course at HCCS fulfills the basic citizenship skills requirement set forth at 8 C.F.R. § 245a.17(a)(3). The AAO does not agree.

The record is clear that the applicant did not enroll in the citizenship preparation course at HCCS for the summer term of July-September 2005 until after he had failed the English language test

for the second time. Thus, the applicant did not provide documentation that he was attending the citizenship preparation course prior to or during his second interview for LIFE legalization, as required under 8 C.F.R. § 245a.17(a)(3) and (b). Furthermore, the letter from HCCS of August 22, 2005, and the enrollment receipt from July 2005, while confirming that the citizenship preparation course included 40 hours of instruction in English and U.S. government and history, also confirmed that the course of study did not span a full academic year. Rather, it was a *summer term course which was the equivalent of at most a one-semester course.*¹

Thus, the applicant's English language study, as documented in the record, does not comport with the requirements set forth in 8 C.F.R. § 245a.17(a)(3) to meet the "basic citizenship skills" requirement of the LIFE Act.

Nor has the applicant satisfied the "basic citizenship skills" requirement under the other two alternatives established in the regulations. He has not provided a high school diploma or GED from a school in the United States, as required under 8 C.F.R. § 245a.17(a)(2), and he did not pass the English language component of his basic citizenship skills examination, as required under 8 C.F.R. § 245a.17(a)(1), at either of his LIFE legalization interviews.

The applicant is not 65 years old or older and is not developmentally disabled. Thus, the applicant does not qualify for either of the exceptions listed in section 1104(c)(2)(E)(ii) of the LIFE Act.

The applicant has failed to demonstrate that he has met the basic citizenship skills requirement as described at 1104(c)(2)(E) of the LIFE Act. Accordingly, he is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act.

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

¹ In the fall of 2003 the applicant took a similar course at the HCCS, Northeast College, as confirmed in a letter from an official of that institution dated November 4, 2003. The letter confirmed that the HCCS is a state recognized, accredited learning institution and that the applicant was enrolled in, and attending, an ESL (English as a second language) course in the fall of 2003 which included 48 hours of instruction, was equivalent to a one semester credit course, and incorporated 8 hours of English vocabulary, phrases and sentences pertaining the U.S. history and government. Even if the applicant completed the course, which is *unclear in the record*, it did not span one academic year as required under 8 C.F.R. § 245a.17(a)(3).