

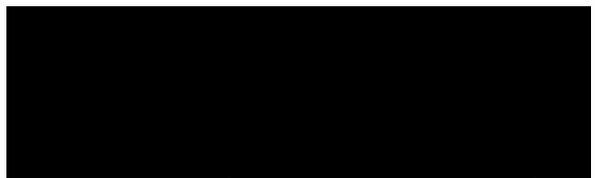
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: MSC 02 240 65253 Office: NEW YORK Date: **APR 29 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 in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] 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.

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), New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further action and consideration.

The director denied the application because the applicant had twice failed examinations meant to establish that she had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act.

On appeal, the applicant submits a letter.

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:

1. 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
2. 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 May 28, 2002, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, under section 1104 of the LIFE Act.

On May 6, 2004, the applicant was interviewed in connection with her LIFE Act application. She failed to demonstrate a minimal understanding of ordinary English during the examination portion of the interview. She also failed the U.S. history and government examination.

On May 6, 2004, the director issued a Notice of Intent to Deny (NOID) in which she indicated that she intended to deny the application because the applicant had failed to demonstrate a basic understanding of English and knowledge of U.S. history and government. *See* section 1104(c)(2)(E)(i) of the LIFE Act. The applicant was notified that she would be afforded a second interview on December 10, 2004.

On December 10, 2004, at the final LIFE legalization interview, the applicant again failed to demonstrate a minimal understanding of ordinary English and knowledge of U.S. history and government.

On March 19, 2005, the director denied the application based on the reasons set out in the NOID.

On appeal, the applicant submits a letter asserting that the determination as to her ability to comply with the basic citizenship skills requirement should be made by a qualified medical professional, and that she should be afforded the opportunity to apply for a “medical waiver exemption.” She states that Citizenship and Immigration Service (CIS) officers failed to contact a medical professional to discuss concerns or solicit specific additional documentation regarding her case, and that her attempts to apply for a medical waiver exemption was rejected. The applicant appears to indicate that she seeks “a temporary restraining order and/or preliminary injunction” in order to “preserve the status quo until the merits of the controversy and be fully and fairly adjudicated.”¹

The regulations provide that 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).

There is no evidence in the record that the applicant had enrolled in a course that includes both English and U.S. history and government coursework and spans an academic year. As such, CIS is required by regulation to administer examinations in basic English and U.S. government and history at interview. *See* 8 C.F.R. § 245a.17(b). Further, if the applicant had complied with regulatory requirements, if she

¹ The applicant’s letter in support of her appeal is contained in the record of proceedings.

had enrolled in the requisite course and had presented appropriate evidence of that prior to or during the May 6, 2004 LIFE legalization interview, the applicant would not have had to take the examinations in basic English and U.S. history and government.

The record establishes that the applicant did not pass the basic citizenship skills examination at the May 6, 2004, and the December 10, 2004, LIFE legalization interviews.

Further, the regulations specify that to fulfill the LIFE Act requirements relating to a minimal understanding of English and an understanding of U.S. history and government by attending certain state-accredited programs, the applicant must enroll in the program and provide documentation of having done so to CIS prior to or during the second LIFE interview. *See* 8 C.F.R. § 245a.17(b). The record establishes that the applicant did not enroll in a course of study that met the regulatory requirements described at 8 C.F.R. § 245a.17(a)(3) prior to the her December 10, 2004, final LIFE legalization interview, nor did she provide evidence of such prior to or during that interview.

The regulations also state that to fulfill the LIFE Act requirements relating to basic citizenship skills an applicant may provide his or her high school diploma or GED from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2). The applicant has not provided a high school diploma or GED from a school in the United States.

The applicant is not 65 years old or older and there is no evidence in the record from a qualified medical professional that she is developmentally disabled.² Thus, she also 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 she has met the basic citizenship skills requirement as described at 1104(c)(2)(E) of the LIFE Act. Thus, she is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act.

It is noted that where the director finds an applicant ineligible for permanent resident status under section 1104 of the LIFE Act, the director must then consider the applicant's eligibility for adjustment of status to that of a temporary resident pursuant to the regulation at 8 C.F.R. § 245a.6, which 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).

² In fact, a Form I-693, *Medical Examination of Aliens Seeking Adjustment of Status*, contained in the record, dated May 23, 2003, from [REDACTED], Brooklyn, New York, certifies that the applicant has met the medical examination and health follow-up requirements for adjustment of status.

When applying for temporary resident status under the *Immigration Reform and Control Act of 1986*, an applicant is not required to demonstrate a basic knowledge of English and U.S. history and government. It is only after such applicant has qualified as a temporary resident and is attempting to adjust to *permanent* resident status that he or she must fulfill requirements relating to English and U.S. history and government. *See* 8 C.F.R. § 245a.3(b)(4)(i)(A).

At the time of denying the applicant's Form I-485, the director also noted that the applicant had failed to establish her eligibility for adjustment of status to that of a temporary resident pursuant to the regulation at 8 C.F.R. § 245a.6. While the director's decision stated: "You have not established eligibility for adjustment of status to temporary resident status under Section 245A of the Act," the specific reasons for the denial are not indicated. Under 8 C.F.R. § 103.3, "the officer shall explain in writing the specific reasons for denial." Therefore, the case is remanded so that the director might determine whether the applicant is eligible for temporary resident status pursuant to the regulation at 8 C.F.R. § 245a.6.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further consideration and action in accordance with the foregoing, and the entry of a new decision regarding the applicant's eligibility for temporary resident status.