



U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED] Office: NEW YORK Date: **AUG 08 2008**  
MSC 03 077 61224

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

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 failed to appear for his second scheduled interview because he had a serious contagious illness. Counsel submits a brief and additional documentation in support of the appeal.

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 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). The high school or GED diploma may be submitted either at the time of filing the Form I-485 LIFE Act application, subsequent to filing the application but prior to the interview, or at the time of the interview. *Id.*

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).

The record reflects that the applicant was interviewed on April 19, 2005, in connection with his LIFE Act application, and failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. The applicant was scheduled for a second interview on October 21, 2005. In an April 19, 2005, Notice of Intent to Deny, the applicant was notified of his second interview and advised that failure to appear for the interview would result in denial of his application based on his failure to pass the citizenship skills test. The applicant failed to appear for his second interview.

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). The applicant did not allege and submitted no evidence that he 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 prior to or at the time of the applicant's second scheduled interview on October 21, 2005. Therefore, assuming, arguendo, that the applicant had attended a state recognized, accredited learning institution, the applicant 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 scheduled 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 he not demonstrate a minimal understanding of the English language at his first interview and failed to appear for his second interview.

The regulation at 8 C.F.R. § 312.5(b) provides, "If an applicant who receives notice of the second scheduled examination date fails to appear without good cause for that second examination without prior notification to the Service, the applicant will be deemed to have failed this second examination."

Counsel stated that, on October 21, 2005, she mailed the applicant's notice that he was unable to keep his appointment to the district office. The record does not reflect that the district office received this notification. In an October 31, 2005, letter, counsel submitted an October 26, 2005, note from [REDACTED] DO (doctor of osteopathic medicine), in which he stated that the applicant had been seen in his office on that date. According to the doctor, the applicant had suffered from "an acute illness since 10/19/05." The doctor recommended that the applicant have no contact with other people. According to the applicant, the doctor's office advised him on the date of his interview that he had shingles, and that the disease was contagious.

The applicant has submitted sufficient evidence to establish that he was unable to attend his second scheduled interview because his doctor advised him that he had a contagious disease and to avoid contact with people. Accordingly, he has established good cause for his failure to keep his second interview on October 21, 2005. Therefore, the district office should have rescheduled his interview and afforded him an additional opportunity to meet the requirements of section 1104(c)(2)(E) of the LIFE Act.

Accordingly, the case is remanded and the applicant scheduled for a final interview and opportunity to meet the citizenship skills requirement, and for issuance of a new decision. If the new decision is adverse, it may be certified to this office.

**ORDER:** This matter is remanded for further action and consideration pursuant to the above.