

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE: [REDACTED] Office: NEW YORK Date: DEC 16 2008
MSC 01 303 61209

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).

IN BEHALF OF APPLICANT: Self-represented

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 black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York, and then remanded by the Administration Appeals Office (AAO). The director's subsequent decision to recommend that the application be denied again has been certified to the AAO. This decision will be affirmed.

In his initial decision, the director denied the application because the applicant had failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

In the subsequent certified decision, the director once again denied the application because the applicant had failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

The applicant had neither addressed the certified decision nor provided any evidence to overcome the director's findings.

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). 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).

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 director, in her Notice to Intent to Deny dated January 7, 2004, advised the applicant of his failure to demonstrate knowledge of the English language and minimal knowledge of United States history and government on May 25, 2005. The applicant was informed that he was being given six months from the date of this notice in which to prepare for a second and final examination.

The director, in issuing her Notice of Decision dated July 10, 2006, noted that on July 6, 2006, the applicant failed to demonstrate knowledge of the English language and minimal knowledge of United States history and government. The director also noted that a Notice of Intent to Deny had been issued on June 10, 2005.

On appeal from the director's initial decision, the applicant asserted that he had made all the necessary arrangements to register at a learning institution. The applicant provided a letter dated July 25, 2006, from a representative of Afrika Business Community, Inc. which referred the applicant for English as a Second Language to the City University of New York, Adult and Continuing Education.

On May 20, 2008, the AAO remanded the case for further action as the record failed to include May 25, 2005 test results and the Notice of Intent to Deny dated June 10, 2005.

On August 5, 2008, the director withdrew the previous decision, reopened the proceedings and issued a Notice of Intent to Deny. In the notice, the applicant was advised of his failure to

demonstrate knowledge of the English language and minimal knowledge of United States history and government on May 25, 2005 and on July 6, 2006.¹

The applicant was provided 30 days in which to submit a response. The applicant, however, failed to respond to the notice. The director subsequently denied the application and certified her decision to the AAO. As previously noted the applicant has not addressed the director's decision or provided any evidence to overcome the director's findings.

The regulation at 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 U.S. Citizenship and Immigration Services prior to or at the time of the applicant's second interview on July 6, 2006. The applicant failed to meet this requirement as no documentation has been presented.

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 at his two interviews he did not demonstrate a minimal understanding of the English language and minimal knowledge of United States history and government. The applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act. Therefore, the decision recommending denial of the LIFE Act application shall be affirmed.

ORDER: The certified decision recommending the denial of the application for permanent resident status is affirmed.

¹ On June 27, 2005, the applicant was unable to answer questions in the English language and was afforded another opportunity to take the test.