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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:

MSC 02 239 62641

Office: NEW YORK

Date: DEC 19 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.


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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had failed to establish that she satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel asserts that the applicant has enrolled in a program to improve her English skills. Counsel contends that the applicant will be better prepared to satisfy the basic citizenship skills requirement once she completes the program. Counsel also notes that, eleven days before her final interview, the applicant received notice that her son was scheduled for surgery and numerous other appointments for scoliosis. Counsel contends that her anxiety about her son’s health affected her ability to take the test. Counsel submits medical appointment letters and an affidavit from the applicant in support of her assertion.

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).

The applicant, who is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does she satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because she does not meet the requirements of section 312(a) of the Immigration and Nationality Act (Act). 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).

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with her LIFE Act application, on March 29, 2004, and again on October 1, 2004. On both occasions, the applicant failed to demonstrate a minimal understanding of ordinary English. The applicant does not dispute this fact on appeal. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 245a.3(b)(4)(iii)(A)(2). The applicant does not have 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).

On appeal, the applicant asserts that she was enrolled in the American Language Communication Center (ALCC) but she had not completed the writing course. The record contains a letter, dated September 16, 2004, from ALCC that indicates the applicant was enrolled in an English course starting on July 5, 2004. The letter does not satisfy the regulatory requirements. There is no evidence that the course of study is for a period of one academic year (or the equivalent), or that the curriculum includes at least 40 hours of instruction in English and United States history and government as required under the regulations at 8 C.F.R. § 245a.17(a)(3). Even if the applicant met the above regulatory requirements, the applicant did not submit the evidence before or at her

second interview. This requirement is a mandatory time frame and clearly stated in the regulation at 8 C.F.R. § 245a.17(a)(3).

On appeal, the applicant also asserts that she enrolled in a new course that began on August 29, 2005. The applicant did not submit any independent, objective evidence in support of her claim and, therefore, she has not satisfied the regulatory requirements at 8 C.F.R. § 245a.17(a)(3). It is also noted that the applicant's affidavit was submitted on appeal on September 15, 2005. The applicant did not submit the evidence before or at her second interview as required under the regulation at C.F.R. § 245a.17(a)(3). Thus, the applicant has failed to satisfy the basic citizenship skills requirement.

On appeal, counsel also contends that the applicant's performance at her final interview was affected by her son's medical condition. While the record does contain several medical appointment letters for her son prior to the applicant's final interview, there exists no provision in the law to excuse failing a skills test at an interview due to family medical reasons. In addition, there is no indication in the record that the applicant raised her son's medical condition at or prior to her final interview.

Based on the foregoing, 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 AAO affirms the director's decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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