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[Redacted]

FILE: [Redacted]  
MSC 02 150 60144

Office: HOUSTON, TX

Date: FEB 27 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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

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

On appeal, counsel requested additional time to submit evidence that the applicant is pursuing a course to comply with the basic knowledge of English, civics and history requirement of the LIFE Act.

The regulations at 8 C.F.R. § 245a.20(a)(2) state, in relevant part:

*Denials.* The alien shall be notified in writing of the decision of denial and of the reason(s) therefor. When an adverse decision is proposed, [CIS] shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted a period of 30 days from the date of the notice in which to respond to the notice of intent to deny. All relevant material will be considered in making a final decision. If inconsistencies are found between information submitted with the adjustment application and information previously furnished by the alien to [CIS], the alien shall be afforded the opportunity to explain discrepancies or rebut any adverse information.

A review of both the electronic and administrative record reveals that a notice of intent to deny was never issued to either counsel or the applicant. Accordingly, the decision of the district director is withdrawn. The case will be remanded for the purpose of the issuance of a notice of intent to deny, which addresses all the evidence in the record and specifies why it is insufficient, as well as a new decision to both counsel and the applicant. The new decision, if adverse, shall be certified to this office for review.

This office would also note the following. 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 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 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 February 26, 2002, the applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record indicates that on October 30, 2002, the applicant was scheduled for an interview in connection with his LIFE Act application. The interview notice sent to the applicant to inform him of this interview states that the applicant is to bring the following "items" to the interview:

THIS LETTER, ALL PASSPORTS, ALL I.N.S. ISSUED DOCUMENTS.

THE PERSON WHO FILED FOR YOU (PETITIONER) EXCEPT  
EMPLOYMENT AND INTERPRETER IF YOU DO NOT SPEAK ENGLISH.

VALID TEXAS PHOTO I.D./LICENSE FOR PETITIONER AND YOURSELF

COMPLETED MEDICAL IF NOT ALREADY SUBMITTED

ORIGINALS OF ALL DOCUMENTS PREVIOUSLY SUBMITTED, OFFICER MAY REQUEST ADDITIONAL DOCUMENTS AFTER INTERVIEW.

LIFE LEGALIZATION – YOU WILL BE TESTED ON GOVERNMENT, HISTORY AND READING, WRITING AND SPEAKING ENGLISH.

On October 30, 2002, the applicant appeared for his interview. However, the record indicates that he did not have an interpreter accompany him to that interview. Consequently, the officer was not able to conduct an interview and the interview was rescheduled for June 23, 2004. The AAO would note that there is no mention of an interpreter on this interview notice apart from the phrase which appears to refer to employment-based matters involving a petitioner and which is worded in a manner that this office finds does not make sense: “THE PERSON WHO FILED FOR YOU (PETITIONER) EXCEPT EMPLOYMENT AND INTERPRETER IF YOU DO NOT SPEAK ENGLISH.”

The interview notice sent to the applicant to inform him of the June 23, 2004 interview also identified for the applicant “items” to bring to the interview by checking off the box before certain lines on this form. However, it appears that a clerical error occurred such that the incorrect “items” were checked. For instance, the applicant was informed that he was required to bring:

YOUR PETITIONER/SPOUSE WITH PHOTO I.D.

A CURRENT LETTER OF EMPLOYMENT FOR YOURSELF/SPOUSE AND 2 PAY STUBS (See “ATTACHMENT”)

MEDICAL EXAM RESULTS FORM I-693  
APPEAR EVEN IF NOT COMPLETED

See “ATTACHMENT”<sup>1</sup>

The following “items” on this list were *not* checked on the June 23, 2004 interview notice:

LIFE LEGALIZATION: YOU WILL BE TESTED ON GOVERNMENT – HISTORY – READING – WRITING AND SPEAKING ENGLISH.

THIS IS YOUR FINAL INTERVIEW NOTICE.  
FAILURE TO APPEAR IS AN AUTOMATIC DENIAL.

The following appeared at the bottom of this notice: “Failure to keep this appointment and to bring the required documents will delay your case and may result in the denial of your application. If you do not speak English, a person (not a family member), who can act as an interpreter, should accompany you to the Immigration interview.”

Thus, the applicant was properly notified prior to the June 23, 2004 interview that he could not expect to be assigned to an officer fluent in Spanish, and that he was required to have an interpreter accompany him.

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<sup>1</sup> The file copy of the interview notice in the record demonstrates that this interview notice had no attachment.

However, he was not accurately notified of the purpose of the interview. Rather, the interview notice seemed to indicate that he was to attend an interview relating to an employment-based petition.

The regulations require 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).

The record indicates that no first interview occurred on October 30, 2002 because the applicant did not have an interpreter accompany him. Thus, the applicant was not given any examinations, he was not provided an opportunity to present evidence that he was attending a state recognized, accredited learning institution, following courses in English and U.S. history and government, etc. on that date. The applicant was not informed that he would be allowed one additional opportunity to establish that he had fulfilled at least one of these requirements. The record also indicates that the applicant was not properly notified of any requirement to have an interpreter accompany him on October 30, 2002.

The regulation at 8 C.F.R. § 245a.17(b) indicates that an applicant who fails to pass the English literacy and/or U. S. history and government tests at the time of the first interview shall be afforded a second opportunity after six months to take these examinations or to submit evidence of having otherwise fulfilled this requirement. This office finds that in this matter the applicant has not yet been provided with a second interview as defined at 8 C.F.R. § 245a.17(b).

**ORDER:** The December 6, 2006 decision of the director is withdrawn. The application is remanded to the director to provide the applicant with a second interview and for any other further action in accordance with the preceding discussion. The director shall issue a new decision that is to be certified to the Administrative Appeals Office for review.