



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 227 60101

Office: HOUSTON

Date: JAN 10 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. The file has been returned to the National Benefits Center. 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. The appeal will be dismissed.

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.

On appeal, counsel contends that the applicant was not given a list of accredited schools in which to satisfy the basic citizenship skills requirement, as requested. Counsel requests that U.S. Citizenship and Immigration Services (USCIS) provide the applicant with a list of accredited schools that he can attend and that the applicant be given another opportunity to retake his exam once the applicant goes to a school accredited by USCIS.

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 Attorney General may waive all or part of the requirements for aliens who are at least 65 years of age or developmentally disabled.

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 he satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act by “[s]peaking and understanding English during the course of the interview for permanent resident status” and answering questions based on the subject matter of approved citizenship training materials, or [b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS).” 8 C.F.R. §§ 245a.3(b)(4)(iii)(A)(1) and (2).

In the alternative, an applicant can satisfy the basic citizenship skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act. The “basic citizenship skills”

requirement of the section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States 8 C.F.R. § 245a.17(a)(2), or

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 8 C.F.R. § 245a.17(a)(3).

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must submit evidence to show compliance with the basic citizenship skills requirement “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 regulation at 8 C.F.R. § 245a.17(b) states that:

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) and (a)(3) of this section [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)]. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). 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).

In the Notice of Intent to Deny (NOID), dated September 15, 2003, the director stated that the applicant was interviewed twice in connection with his LIFE Act application, on January 8, 2003, and again on July 23, 2003, pursuant to 8 C.F.R. § 245a.17(b). The director stated that the applicant failed to demonstrate a minimal understanding of ordinary English on both occasions. The applicant, through counsel, conceded that the applicant was given two opportunities to pass the required test and failed both times.

On appeal, counsel contends that the applicant could not satisfy an alternative to the basic citizenship skills requirement because he was not given a list of state recognized, accredited schools as

requested. The record reflects a letter by counsel to USCIS requesting a list of state recognized, accredited schools, dated September 22, 2003. Counsel stated that “the applicant feels that he is at a disadvantage because the immigration service is not issuing a list of schools that the applicant can attend that the applicant could afford to help him pass and know that this school was approved by your office.”

As previously mentioned, an applicant for LIFE Legalization has the burden to demonstrate that he or she has complied with the basic citizenship skills requirement as defined by 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). As the institution must be a state recognized, accredited learning institution in the United States, it is the applicant’s burden to contact the appropriate state agency and inquire about state recognized and accredited learning institutions within his financial means. USCIS has no jurisdiction over whether a state recognizes an institution or whether a learning institution is accredited. USCIS has no obligation to provide the applicant with a list of state recognized, accredited learning institutions; moreover one meets the applicant’s financial budget. The burden rests solely on the applicant to establish to USCIS’ satisfaction that he is attending or has attended a state recognized, accredited learning institution in the United States.

It is noted that the record reflects that counsel requested a list of accredited schools on September 22, 2003, 63 days after the applicant’s second interview. The applicant could not have enrolled in or completed course work to satisfy the alternative to the basic citizenship skills requirement before the second interview. This requirement is a mandatory time frame and clearly stated in the regulations at 8 C.F.R. § 245a.17(a)(3).

Therefore, 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 will not disturb 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.