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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] MSC 01 310 60938

Office: NEW YORK

Date: JUL 03 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. 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 appeal will be dismissed.

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, the applicant asserts that there was plain and substantial error, a violation of due process and an abuse of discretion in the denial of his application. The applicant states that the director drew an impermissible conclusion that, because he was able to work and obtain a driver’s license, he was not developmentally disabled.

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).

The record reflects that the applicant was interviewed twice in connection with his LIFE Act application, first on March 8, 2004, and again on August 27, 2004. On both occasions, the applicant failed to demonstrate a minimal understanding of English and a minimal knowledge of United States history and government. Furthermore, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

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 submitted a Form N-648, Medical Certification for Disability Exceptions, signed by [REDACTED], who identified himself as a doctor of psychiatry. Dr. [REDACTED] concluded that the applicant suffered from a learning disability that prevented him from learning English and United States history and government. The director concluded that the Form N-648 was unacceptable as evidence that the applicant suffered from a learning disability as the applicant had demonstrated that he was able to obtain and maintain employment and driver's licenses in New York and New Jersey.

The regulation at 8 C.F.R. § 245a.17(c) provides that an applicant for LIFE Legalization can qualify for the exceptions listed under 8 C.F.R. §§ 312.1(b)(3) and 312.2(b). Section 312.1(b) provides:

(3) The requirements of paragraph (a) of this section shall not apply to any person who is unable, because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language as noted in paragraph (a) of this section.

"Medically determinable" is defined as:

[A]n impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language . . . or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency, as outlined in paragraph (c) of this section.

Section 312.2(b)(2) requires that those seeking an exception from the citizenship skills requirements of section 312.1(a) must submit a Form N-648 completed by a doctor or clinical psychologist licensed to practice in the United States. This medical professional "shall be able to attest to the origin, nature, and extent of the medical condition as it relates to the disability exceptions." The regulation also states that an affidavit or attestation by the applicant or a relative is insufficient as a medical attestation.

[REDACTED] indicated on the Form N-648 that the applicant suffered from a learning disability. However, he did not state the origin, nature or extent of the learning disability. Dr. [REDACTED] stated that he examined the applicant on August 9, 2004. In block 7, where he was asked if this was his first examination of the applicant, he put "N/A;" however, he did not complete the second part of the question, which asked for the length of time that he had treated the applicant. Additionally, in block 3, where he was asked to

provide detailed information on the connection between the applicant's impairment and his inability to learn, Dr. [REDACTED] simply stated that the applicant "states that he is unable to read or write" either Spanish or English, "and for that reason he is incapable [sic] to demonstrate knowledge of English or U. S. history and civics."

It is unclear from the Form N-648 whether [REDACTED] examined and treated the applicant. It is clear, however, that [REDACTED]z did not diagnose the applicant with any specific impairment, and that the basis of his diagnosis was the applicant's own statement. As discussed above, the applicant's attestation of his medical condition is insufficient to meet the requirements of the regulations. Accordingly, the Form N-648 signed by [REDACTED]z does not satisfy the applicant's burden of proof.

As noted previously, the regulation at 8 C.F.R. § 245a.17(c) permits the Secretary of Homeland Security to waive all or part of the citizenship skills requirements for applicants who are developmentally disabled.

The regulation at 8 C.F.R. § 245a.1(v) defines developmentally disabled as follows:

- The term *developmental disability* means a severe, chronic disability of a person, which:
- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - (2) Is manifested before the person attains age twenty-two;
 - (3) Is likely to continue indefinitely;
 - (4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning (iv) mobility, (v) self direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
 - (5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

Although the director erroneously associated his findings with the Form N-648 submitted by the applicant, she correctly noted that the applicant's ability to maintain employment as a taxi driver, route distributor, clerk and salesperson, and his ability to obtain a driver's license, are not indicative of an individual who is developmentally disabled. The applicant submitted no documentation to establish that he is developmentally disabled as defined in 8 C.F.R. § 245a.1(v), as he has not established that he suffers from any mental or physical impairment that results in functional limitations in three or more of areas of life activity, or that he needs individually planned and coordinated treatment or care.

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, and is not eligible for any of the exceptions permitted by section 1104(c)(2)(E)(ii) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

The record reflects that the applicant was convicted of harassment with physical contact. The record does not contain a certified disposition of this offense.

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