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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

MSC 02 232 66467

Office: NEW YORK

Date:

JUN 10 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 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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, the applicant asserts that she has complied with all the requirements and is eligible under the LIFE Act. She submits a medical certification.

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 above requirements for aliens who are at least 65 years of age or developmentally disabled.

The pertinent regulation regarding aliens to be granted an exception to the basic citizenship skills requirement and those circumstances under which the Attorney General could consider a waiver of such requirement is contained at 8 C.F.R. § 245a.17(c) and states the following:

Exceptions. LIFE Legalization applicants are exempt from the requirements listed under paragraph (a)(1) of this section if he or she has qualified for the same exceptions as those listed for naturalization applicants under §§ 312.1(b)(3) and 312.2(b) of this chapter. Further, at the discretion of the Attorney General, the requirements listed under paragraph (a) of this section may be waived if the LIFE Legalization applicant:

- (1) Is 65 years of age or older on the date of filing; or
- (2) Is developmentally disabled as defined under 8 C. F. R. § 245a.1(v).

The record shows that the applicant was born on June 23, 1942, and that her LIFE Act application was filed on May 20, 2002. Therefore, the applicant is not eligible to the discretionary waiver described at both section 1104(c)(2)(E)(ii) of the LIFE Act and 8 C.F.R. § 245a.17(c)(1), as she was only 60 years of age on the date her LIFE Act application was filed. It must now be determined whether the applicant is qualified for either an exception under 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b) on the basis of a physical or mental impairment, or a discretionary waiver under 8 C.F.R. § 245a.1(v) on the basis of a developmental disability.

Developmentally disabled

The first issue to address is whether the applicant has established she is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable developmental disability.

The regulation at 8 C.F.R. § 245a.1(v) states:

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.

Based on the above evidence, the applicant has not established that she is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a developmental disability. The evidence demonstrates that the applicant has a mental impairment that manifested at in childhood and is likely to continue indefinitely. In the Form N-648, stated, "Her prognosis is stable and unchanged since there is no treatment for her cognitive condition."

However, the evidence in the record is insufficient to establish that the applicant is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a developmental disability pursuant to 8 C.F.R. § 245a.1(v)(4) and (5). There is nothing in the record to indicate that the applicant's condition results in substantial functional limitations in three or more areas of major life activity as required under the regulation at 8 C.F.R. § 245a.1(v)(4). The evidence in the record failed to indicate the applicant's need planned care or treatment as required under the regulation at 8 C.F.R. § 245a.1(v)(5).

Based on the above, it is cannot be concluded that the applicant suffers from a physical or mental disability or impairment that would allow her to be considered developmentally disabled so as to qualify for the exceptions contained at 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b). As the applicant

has failed to establish that she is developmentally disabled, she is not eligible for a discretionary waiver under 8 C.F.R. § 245a.1(v).

Physical or mental impairment

The next issue to be addressed is whether the applicant has established she is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable physical or mental impairment.

The regulation at 8 C.F.R. § 312.1(b)(3) states, in pertinent part:

The [basic citizenship skills requirement] 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 . . . . For purposes of this paragraph, the term medically determinable means an 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 as required by this section, 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.

All persons applying for naturalization and seeking an exception from the requirements of 8 C.F.R. § 312.1(a) and paragraph (a) of this section based on the disability exceptions must submit Form N-648, Medical Certification for Disability Exceptions, to be completed by a medical or osteopathic doctor licensed to practice medicine in the United States . . . . 8 C.F.R. § 312.2(b)(2)

The applicant has established that she has a medically determinable impairment as defined in the pertinent regulations. On appeal, the applicant submits a Form N-648 prepared by psychologist [REDACTED], which states in pertinent part:

[REDACTED] is a 64-year-old Hispanic female whose cognitive resources as measured by several neuropsychological scales pertains to the mild deficient level of intellectual functioning . . . . These cognitive deficits affect her ability to learn or retain new information. In addition, [REDACTED] also meets criteria for a Major Depressive Disorder . . . which is a contributing factor that further diminishes her concentration, memory and motivation. These psychological test results confirm that [REDACTED] presents with emotional and cognitive impairments that chronically affect her ability to learn, memorize, and recall new data beyond the basic knowledge she has acquired in her lifespan (6<sup>th</sup> grade). She was left back several times and manifested symptoms of a learning disability since she was a child.

Overall, she cannot memorize or retain new information . . . . This is why she has not been able to retain this information in Spanish, her native language . . . . Finally, it should be noted that people with mild mental subnormality like hers, have an early onset (childhood) but it becomes evident when they start failing in school (around 5<sup>th</sup> or 6<sup>th</sup> grade), as she did. She could only

complete 6<sup>th</sup> grade, but was left back several times.

Based on the above evidence, the applicant has established that she is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable physical or mental impairment. The applicant has a mental impairment, which has existed since she was a young child, resulting from psychological abnormalities which have been measured by several neuropsychological scales to have resulted in intellectual functioning so impaired as to render an individual unable to fulfill the requirements for English proficiency. Thus, the applicant has established she is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable physical or mental impairment pursuant to 8 C.F.R. § 312.1(b)(3).

**ORDER:** The appeal is sustained. The director will complete adjudication of the application.