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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: MSC 02 180 61250

Office: NEW YORK

Date: JUN 18 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 District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application finding that the applicant failed the basic citizenship requirements. The director stated that the applicant failed the test of his ability to speak, read, and written English at his first interview. The applicant was granted six months to prepare himself for a second and final examination. The applicant did not appear at that second interview.

On appeal, counsel for the applicant asserts that the applicant was sick on the date of the second interview and submits additional documentation.

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 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:

- (1) He or she has complied with the same requirements as those listed for naturalization applicants . . . ; or,
- (2) He or she has a high school diploma or general education development diploma (GED) . . . ; or,
- (3) 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. . . .”

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 record reflects that on March 29, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. The applicant was scheduled to appear for an interview on April 9, 2004, based on his application. Counsel for the applicant requested that the interview be rescheduled because he had a scheduling conflict. The interview was rescheduled for July 22, 2004. On July 22, 2004, the director sent the applicant a Notice of Intent to Deny (NOID) the application because the applicant failed to appear for his scheduled interview. On that same day, counsel requested another interview date due to a scheduling conflict. The interview was subsequently rescheduled for August 23, 2004. On August 23, 2004, the applicant appeared for an interview based on his application but failed the English exam.

On August 23, 2004, the director issued another NOID, finding that the applicant had not established the basic citizenship skills requirements under the LIFE Act. The director informed the applicant that he had been granted a second and final interview six months from the date of the notice. The director informed the applicant that failure to appear would result in denial of his application based solely on 8 C.F.R. 245a.17(b).

The applicant's second interview was scheduled for February 23, 2005. On February 23, 2005, the director gave the applicant an interview notice for April 8, 2005. On April 8, 2005, counsel requested that the interview be rescheduled due to a scheduling conflict. The interview was rescheduled for May 6, 2005. On May 6, 2005, counsel requested another adjournment due to a scheduling conflict. The interview was rescheduled for June 3, 2005. The applicant failed to appear for his interview on June 3, 2005.

On June 3, 2005, the director denied the application, based on the applicant's failure to pass the citizenship exam during his first interview and failure to appear on June 3, 2005, for his second interview.

On appeal, counsel for the applicant asserts that the applicant was sick on the date of the scheduled interview. He submits a doctor's note, dated June 22, 2005, stating that the applicant injured his back at home on June 2, 2005. The note states that the applicant had severe low back pain and was placed on medication and rest.

The director rescheduled the interview several times at counsel's request. On June 3, 2005, the applicant failed to appear for his scheduled interview. If he was unable to appear at the interview for medical reasons, his attorney should have appeared on the scheduled interview date to inform the director and then followed up with a note from the doctor. Neither counsel nor the applicant made any attempt to contact the director about his reason for not appearing at the interview. The applicant was properly notified of the date of his second interview and failed to appear at that interview without good cause. The doctor's note was written about three weeks after the applicant failed to appear for his interview. Consequently, the director's decision to deny the LIFE Act application will be affirmed.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The applicant has failed to meet this burden.

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