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

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FILE: [Redacted]
MSC 02 075 60544

Office: HOUSTON

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:

SELF-REPRESENTED

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, Houston, 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 director denied the application because the applicant failed to establish that he satisfied the basic citizenship skills requirement under section 1104(c)(2)(E) of the LIFE Act. The director provided the applicant two opportunities to pass the English literacy and/or the United States history and government tests. The applicant failed to pass the tests or submit relevant evidence as described in the regulations at 8 C.F.R. § 245a.17. The district director also denied the application because the applicant failed to provide requested court dispositions for several arrests.

On appeal, the applicant submits information regarding his criminal records.

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

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, pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE Act application. On September 30, 2005, the applicant was unable to understand sufficient English to be placed under oath. On May 4, 2006, the applicant was unable to understand sufficient English for the interview to be conducted in English and to pass the English writing and United States history and government test.

On May 3, 2006, the director issued the applicant a Form I-72, Request for Evidence (RFE) requesting that the applicant submit a court disposition, indictment, and judgment from the Country District Clerk’s office in the jurisdiction in which each arrest occurred. The director instructed the applicant to go to the District Clerk for Montgomery County, Texas, to obtain his criminal records. In response to the RFE, the applicant submitted a Records Search dated May 12, 2006, from the Clerk of the County

Court of Montgomery County, Texas, which showed a May 19, 1992, Driving While Intoxicated (DWI) conviction; two December 25, 1991, bail jumping charges; and, a November 21, 1994, Motion to Revoke DWI.

On June 6, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) his application, finding that the applicant failed to demonstrate the necessary understanding of English and knowledge of U.S. history and government. The director also found that the applicant had failed to provide the requested documentation relating to his arrests.

On August 9, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

The first issue in this proceeding is whether the applicant is ineligible for adjustment of status under the LIFE Act for his failure to provide requested documents.

On appeal, the applicant submits a Records Search from the Montgomery County Sheriff's Office and a final disposition for a May 19, 1992, Driving While Intoxicated (DWI) conviction. The Sheriff's Office Records Search indicates an additional arrest on April 16, 1994, for Assault Causing Bodily Injury, for which the applicant did not provide a final court disposition. Furthermore, the applicant did not provide a final court disposition for the two December 25, 1991, bail jumping charges. The applicant has not submitted the requested final court dispositions for all his arrests. Therefore, the director's decision to deny the application on this ground will be affirmed.

The application cannot be approved, furthermore, because the applicant failed to satisfy the basic citizenship skills requirement under section 1104(c)(2)(E) of the LIFE Act. On two occasions, the applicant failed the history, government, and writing test due to his inability to understand English and has not submitted any evidence that he satisfies either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act.

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.