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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 207 60044

Office: NEW YORK

Date: JUN 30 2008

IN RE: Applicant:

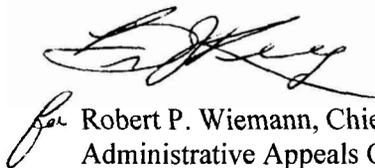
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

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.


for 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 dismissed.

The director denied the application because the applicant failed to satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, the applicant states that due to a developmental disability she qualifies for an exception, under Section 245a.1(v), to the basic citizenship skills requirement. The applicant does not submit additional evidence on appeal.

The issue in this proceeding is whether the applicant has established that she satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

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.

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:

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.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was first interviewed in connection with her LIFE Act application, on April 12, 2004. On that occasion, the applicant failed to demonstrate a minimal knowledge of civics and history of the United States. The applicant does not dispute this on appeal. The director granted the applicant an additional 6 months to prepare for a second and final examination. The applicant was scheduled for re-examination on October 15, 2004. However, again the applicant failed to demonstrate a minimal knowledge of civics and history of the United States. 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).

On appeal, the applicant admits that she had twice failed to pass the basic citizenship skills requirement. The applicant asserts, however, that due to her developmental disability, she meets an exception, under Section 245a.1(v), to the basic citizenship skills requirement.

Pursuant to the provisions of 8 C.F.R 245a.1(v), the term developmentally disabled means the same as the term developmental disability defined in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act of 1987, Pub. L. 100 – 146, which states that:

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.

On appeal, the applicant states that she suffers with a developmental disability and requests an exception under the provisions of 8 C.F.R 245a.1(v). The applicant, however, does not submit any medical documentation in support of her claim, on appeal. Also, the record does not reflect that the applicant previously submitted any medical documentation to establish her claimed developmental disability.

The applicant has not submitted documentation, such as a Medical Certification for Disability Exceptions. There is no evidence of record to establish that a qualified medical professional certifies that:

1. The applicant has any impairment(s) that affects her ability to learn and/or demonstrate knowledge;
2. In his or her professional opinion, impairment(s) described affects the applicant's functioning to such a degree that she is unable to learn and/or demonstrate an ability to speak, read, or write English; and,
3. In his or her professional opinion, impairment(s) described affects the applicant's functioning to such a degree that she is unable to learn and/or demonstrate knowledge of U.S. history and civics, even in a language the applicant understands.

As there is no medical documentation, there is no basis to conclude that the applicant has a developmental disability that warrants an exception under 8 C.F.R 245a.1(v).

The applicant, who is neither 65 years old nor has established that she is developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does she satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because she does not meet the requirements of section 312(a) of the Immigration and Nationality Act (Act).

It is also noted that there is no evidence of record that the applicant has enrolled in classes in U.S. history and government as required under 8 C.F.R. § 245a.17(a)(3). The applicant stated that her enrollment in English classes were of ‘no avail,’ and she did not submit the required evidence before or at her 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, and does not meet the exception under 8 C.F.R 245a.1(v). 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.