

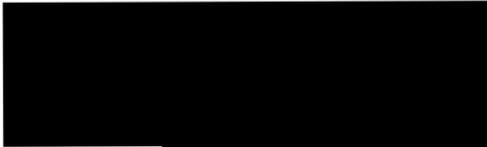
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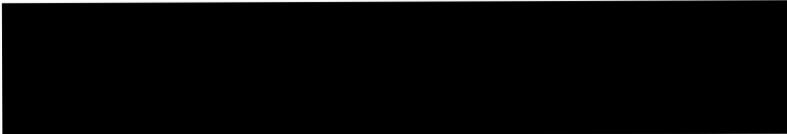
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IN RE: Applicant:



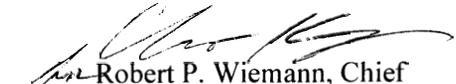
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



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, Houston, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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, counsel asserts that the applicant is pursuing a basic course in English, which will provide her with a forty hour English certificate. Counsel attaches a copy of a receipt in the applicant’s name.

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 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). 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 interviewed twice in connection with her LIFE Act application, on May 6, 2005, and again on December 2, 2005. On both occasions, the applicant failed to demonstrate a minimal understanding of ordinary English. The applicant does not dispute this fact on appeal. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 245a.3(b)(4)(iii)(A)(2). 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).

In the January 13, 2006, Notice of Decision, the director denied the instant application based on the applicant’s failure to demonstrate an understanding and knowledge of English. On appeal, counsel asserts that the applicant is pursuing a basic course in English, which will provide her with a certificate for completing forty hours of instruction in English. Counsel submits a copy of a receipt in the applicant’s name. The receipt indicates that the applicant’s payment of \$197.00 was accepted. The receipt contains a hand-written note that indicates it is for payment of an ESL class. However,

the receipt does not contain the name of the institution, class name, or the number of hours of instruction.

Counsel also submits a copy of Houston Community College, Continuing Education, Schedule of Classes for Spring 2006. The schedule of classes indicates that the college offers an ESL 1 course starting on January 23, 2006, through March 1, 2006, for \$197.00. The record does not contain a registration summary or transcript in the applicant's name.

It is also noted that the applicant must complete at least 40 hours of instruction in both English and government and history of the United States as required under the regulation at 8 C.F.R. § 245a.17(a)(3). Here, if counsel's assertion is taken at face value, the applicant is enrolled in an English course and not both English and government and history of the United States. The evidence also fails to demonstrate that the applicant is attending a state recognized, accredited learning institution in the United States, and that the course of study is for a period of one academic year (or equivalent).

Furthermore, the applicant must submit evidence to show compliance with the basic citizenship skills requirement either prior to or at the time of the second interview. This requirement is a mandatory time frame and clearly stated in the regulation at 8 C.F.R. § 245a.17(a)(3). The record indicates that the evidence was submitted on appeal on February 8, 2006, 68 days after the second interview. Thus, the applicant has failed to satisfy the basic citizenship skills requirement.

Based on the above discussion, 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. Accordingly, the AAO affirms 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.