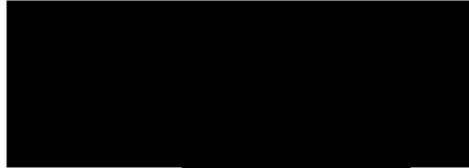


**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



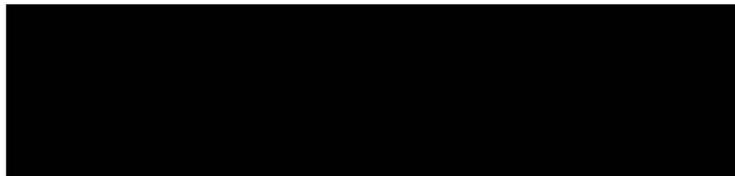
L2

FILE: [REDACTED]
MSC 02 136 60665

Office: NEW YORK

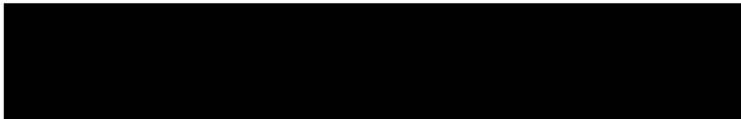
Date: **MAR 12 2008**

IN RE: Applicant:



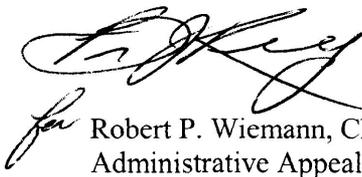
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



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 City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application because the applicant 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 was not feeling well on the day of her second interview and that her application should be approved in the interests of family unification.

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding 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 who are developmentally disabled. *See also* 8 C.F.R. § 245a.17(c).

An applicant may establish that he or she has met the requirements of section 312(a) of the Immigration and Nationality Act (Act) by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. *See* 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 and 312.2.

An applicant may also establish that he or she has met the requirements of section 312(a) of the Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2).

Finally, an applicant may establish that he or she has met the requirements of section 312(a) of the Act by providing evidence that he or she has attended or is attending a state recognized, accredited learning institution in the United States, following a course of study which spans one academic year and that includes 40 hours of instruction in English and United States history and government. The

applicant may provide documentation of such on the letterhead stationary of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3).

The applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after 6 months: to pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit evidence that he or she has attended or is attending a state-recognized, accredited learning institution in the United States, following a course of study which spans an academic year and that includes 40 hours of instruction in English and United States history and government. *See* 8 C.F.R. § 245a.17(b).

On May 7, 2003, the applicant filed her Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On May 6, 2004, the applicant was interviewed in connection with her LIFE Act application. She failed to demonstrate a basic understanding of ordinary English during the examination portion of the interview.

On the same date, May 6, 2004, the director issued a notice of intent to deny (NOID) in which she indicated that the applicant had failed the basic citizenship skills examination at her LIFE interview. The applicant was notified that she would have a final re-examination on November 26, 2004. The director indicated that if the applicant failed that examination or if she failed to appear for the second interview, her LIFE Act application would be denied.

At her second interview, which took place on December 15, 2004, the applicant again failed the basic citizenship skills examination for failure to demonstrate a basic understanding of ordinary English, as well as a basic knowledge of U.S. history and government.

On April 11, 2005, the director denied the application for the reasons stated in the NOID.

On appeal, counsel asserts that the applicant was ill on the date of her second interview, which negatively affected her performance. The application should be approved in the interests of family unification, counsel claims, because the applicant's husband is entitled to legal permanent residence and she has a U.S. citizen child. Counsel also indicates that the applicant has enrolled in an adult learning center for U.S. history, civics, and English language, but has submitted no documentary evidence of the applicant's enrollment in any such course(s), the date thereof, and the course results.

The foregoing points on appeal provide no grounds for overturning the director's decision.

The record confirms that the applicant failed to pass the basic citizenship skills examination twice – on May 6, 2004 and on December 15, 2004. As an alternative to passing the basic citizenship skills examination, the regulations state that an applicant may provide his or her high school diploma or GED from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2). The

applicant has not provided a high school diploma or GED from a school in the United States. Nor has the applicant provided any evidence that she took, or is taking, a one-year course of study that includes 40 hours of instruction in the English language and U.S. government and history at a state recognized, accredited learning institution. *See* 8 C.F.R. § 245a.17(a)(3).

The applicant is not 65 years old or older and is not developmentally disabled. Thus, she does not qualify for either of the exceptions listed in section 1104(c)(2)(E)(ii) of the LIFE Act.

The applicant has failed to demonstrate that she has met the basic citizenship skills requirement as described at 1104(c)(2)(E) of the LIFE Act. Thus, she is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act.

The record includes a fingerprint results report from the Federal Bureau of Investigation indicating that the applicant was arrested by the county police in Mineola, New York, on January 19, 1993, on a charge of petit larceny. In any future proceedings before Citizenship and Immigration Services (CIS), the applicant must furnish a certified final court disposition of this arrest.

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