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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 018 63708

Office: NEW YORK

Date:

MAY 05 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. All documents have been returned to the office that originally decided your case. 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 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 AAO will dismiss the appeal.

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, the applicant contends that the director failed to assess timely-submitted medical information which indicated that she suffered from a memory condition, which caused memory lapse and thus prohibited her from learning English. No additional evidence is submitted.

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 was 58 years old at the time she took the basic citizenship skills test and provided no evidence to establish that she was developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Further, the applicant does not 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).

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 afforded two interviews in connection with her LIFE Act application. The applicant failed both tests during her August 27, 2004 interview, and a notice of intent to deny (NOID) was mailed to the applicant notifying her of the basic citizenship skills requirements. The exceptions to these requirements were clearly stated, and the applicant was afforded an opportunity to respond to the notice with evidence in support of her eligibility at the time of her second interview. No response was submitted, and no additional evidence was presented at the time of the second interview. On April 22, 2005, the applicant again failed both tests. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

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, if he or she meets one of the criteria defined in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). In part, an applicant must establish that he or she meets the following under 8 C.F.R. § 245a.17:

- (2) He or she has a high school diploma or general education development diploma (GED) from a school in the United States; 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.

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). The applicant also has not demonstrated that she attended, or was attending, a state recognized, accredited learning institution in the United States that provides a course of study for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) with curriculum including at least 40 hours of instruction in English and United States history and government as allowed under 8 C.F.R. § 245a.17(a)(3). Although the record includes a certificate indicating that she successfully completed a basic course in English as a Second Language in the Spring of 2004, the record does not contain sufficient detail regarding the accreditation of the school (St. Sebastian's R.C. Church), nor does it indicate the amount of instruction hours she received.

It is noted that on May 23, 2005, CIS received a motion to reopen. CIS accepted the motion for filing, but informed the applicant that the motion was premature, since no denial had yet been issued. In this motion, the applicant alleges that she should be permitted to test in Spanish based upon submission of Form N-648, Medical Certification for Disability Exceptions, indicating that she has mental and emotional impairments blocking her memory. Upon review of the record, no Form N-648 was submitted to support these contentions.

Consequently, the director denied the application on February 23, 2006, finding that 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, the applicant alleges that director issued the decision without assessing the medical information provided prior to appeal. On Form I-290B, the applicant provides the name and address of a physician whom she claims is “willing and capable of producing the medical expertise needed.”

Upon review, the applicant has not overcome the basis for the director’s denial. Specifically, although she contends that she is exempt from the requirements due to a medical impairment, she has provided no evidence to support these contentions.

The regulation at 8 C.F.R. § 245a.1(v) defines the term “developmentally disabled” as follows:

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, Public Law 100146.

As a convenience to the public, that definition is printed here in its entirety: 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.

The record does not contain an executed Form N-648, nor does the applicant submit any medical evidence in the form of records or statements from medical practitioners to support this contention. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, a review of the minimal medical evidence in the record demonstrates that the applicant has no history of any mental impairments. Specifically, the record contains two Forms I-693, Medical Examination of Aliens Seeking Adjustment of Status, dated August 20, 2001 and December 15, 1997. On both of these forms, the respective doctors indicate that the applicant had no apparent defect, disease, or disability. It is noted that evaluation included assessment for mental defects and mental retardation. In addition, on Form I-687, executed under oath by the applicant on December 15, 1993, the applicant contends in question 39 that she has never been treated for a mental disorder. Since the definition of developmentally disabled, above, requires the impairment to manifest prior to age 22, it is evident that the applicant does not qualify for an exemption under this provision.

The applicant has not satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act. In addition, she has not satisfied either alternative of the “basic citizenship skills” requirement nor has she demonstrated her eligibility for exemption set forth in this section. 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.