



U.S. Citizenship
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FILE: [REDACTED] Office: NEW YORK
MSC 02 233 60037

Date:

MAY 23 2006

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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

The district director denied the application because the applicant twice failed examinations meant to establish that he had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel for the applicant submits a brief statement.

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 [Secretary of Homeland Security]) 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 Secretary of Homeland Security may waive all or part of the above requirements for applicants who are at least 65 years of age or who are developmentally disabled. *See* 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. 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 – 312.3.

An applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. 8 C.F.R. § 245a.17(a)(2). The high school or GED diploma may be submitted either at the time of filing the Form I-485 LIFE Act application, subsequent to filing the application but prior to the interview, or at the time of the interview. *Id.*

Finally, an applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by establishing that:

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 may submit certification on letterhead stationery from a state recognized, accredited learning institution 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 applicant's name and A-number must appear on any such evidence submitted).

8 C.F.R. § 245a.17(a)(3).

An 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 six months (or earlier at the request of the applicant) to pass the required tests or to submit the evidence described above. 8 C.F.R. § 245a.17(b).

On May 21, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE Act application, on April 19, 2005, and again on July 22, 2005. On both occasions, the applicant passed the history and government test and reading skills portion of the interview, but failed to pass the writing skills portion of the interview. Therefore, the director denied the application on September 16, 2005.

On appeal, counsel asserts that the applicant suffers from a significant learning disability that limits his ability to write proficiently in both his native language (Spanish) and English. In support of this assertion, counsel provides an evaluation of the applicant, dated November 15, 2005, by clinical psychologist [REDACTED], who concludes that "...[The applicant] is a neurocognitively [sic] impaired Spanish-dominant bilingual man whose functioning is approximately below average. There are significant deficits [sic] in various areas of functioning: visuospatial [sic]; visual memory; auditory memory. The clinical picture is that of a cognitive disorder NOS (possible etiology or aggravating factors was [a] motor vehicle accident) and a longstanding reading and writing disorder."¹

The term "*developmentally disabled*," which means the same as the term "*developmental disability*," is defined in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act of 1987, Public Law 100-146:

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

¹ A copy of the full evaluation report is contained in the record of proceedings.

- 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, inter-disciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

8 C.F.R. § 245a.1(v).

Counsel's assertion that the applicant suffers from a "significant learning disability" and Dr. Aranda's conclusion that the applicant has a "cognitive disorder" do not establish that the applicant is "developmentally disabled." Furthermore, a Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, contained in the record, dated March 12, 2002, states that the applicant had "no defect, disease or disability." The applicant evidently understood the questions posed by the interviewing officer with reference to questions regarding United States history and government and successfully passed this portion of the examination, as well as the reading portion. However, he was unable to demonstrate his ability to write words in ordinary usage in the English language.

The AAO determines that the applicant, who is not 65 years old, has not established that he is developmentally disabled; therefore, he does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act.

The applicant has not provided 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). Nor has the applicant provided evidence to demonstrate that he had attended or was attending at the time of his second interview on November 19, 2004, 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).

The applicant also has failed to demonstrate that he satisfies 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). The applicant has not passed 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)."

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.

Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

It is noted that beyond the decision of the district director, the applicant failed to submit proof of his identity pursuant to 8 C.F.R. §245a.2(d)(1).

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