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U.S. Citizenship
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FILE:

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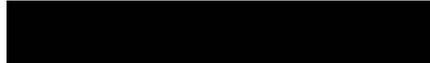
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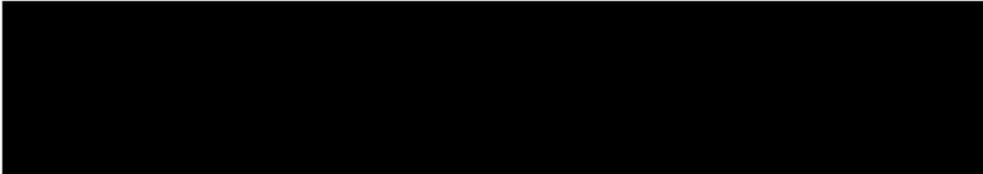
Applicant:



APPLICATION:

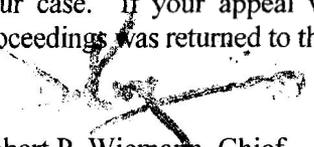
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been forwarded to the Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.


Robert P. Wieman, 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 twice failed examinations meant to establish that she had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel asserted that denying the application based on the applicant's inability to pass the basic citizenship skills examination was an abuse of discretion. He also stated that the regulation governing this issue is impermissibly vague.

On the appeal form, counsel also indicated that he would file a brief or additional evidence after receiving a response to a Freedom of Information Act request made in this matter. The record indicates that counsel was sent such response on February 27, 2008. To date, CIS has not received any additional evidence or brief. On May 12, 2008, the AAO sent counsel a facsimile transmission to inquire whether he had such additional evidence or brief and to request that a copy of such brief be sent by facsimile or mail to the AAO within five business days. To date, counsel has not responded to that notice. Thus, the AAO will base this decision on the evidence of record.

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 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 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. *See* 8 C.F.R. § 245a.17(a)(2). The GED or high school 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 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 6 months (or earlier at the request of the applicant) to pass the required tests or to submit the evidence described above. *See* 8 C.F.R. § 245a.17(b).

On February 21, 2003, the applicant filed the Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On April 2, 2004, the applicant was interviewed in connection with her LIFE Act application. She failed to pass the basic citizenship skills examination provided at the LIFE legalization interview.

On April 2, 2004, the director issued the Notice of Intent to Deny (NOID) in which she indicated that the applicant had failed the basic citizenship skills examination at the April 2, 2004 LIFE interview. She notified the applicant that she would have a final re-examination on October 15, 2004. She indicated that if the applicant failed that examination or if she failed to appear for that second interview, her LIFE Act application would be denied.

On October 15, 2004, the applicant failed to pass the basic citizenship skills examination provided at the second LIFE interview.

On April 11, 2005, the director denied the application based on the reasons set out in the NOID.

On appeal, counsel asserted that denying the application based on the applicant's inability to pass the basic citizenship skills examination was an abuse of discretion. He also stated that the regulation governing this issue is impermissibly vague.

These assertions are not persuasive. An applicant who fails to meet the basic citizenship skills requirements as described at 1104(c)(2)(E) of the LIFE Act is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act.

The record confirms that the applicant did not pass the basic citizenship skills examination on April 2, 2004 and on October 15, 2004. The applicant did not provide evidence that she has attended or is attending a state

recognized, accredited course of study which spans an academic year and which includes 40 hours of instruction in English and U.S. history and government.

The regulations state that to fulfill the LIFE Act requirements relating to basic citizenship skills an applicant may also 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.

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.

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