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U.S. Citizenship  
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FILE:

MSC-02-138-61145

Office: HOUSTON

Date: NOV 06 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Houston, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director initially denied the application because the applicant failed to establish that he satisfied the basic citizenship skills requirement under section 1104(c)(2)(E) of the LIFE Act. The applicant, through counsel, filed a notice to appeal the denial. After reviewing the appeal, the director *sua sponte* reopened the application. The director has now rendered a new decision to deny the application because the applicant failed to establish that he satisfied the basic citizenship skills requirement.

On appeal, counsel for the applicant asserts that the applicant meets the requirements of 8 C.F.R. § 245a.17(a)(3) because he completed the courses, ESL I (Communication Improvement I) and Citizenship Preparation, at Houston Community College, and he submitted the corresponding certificates of completion.

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 he satisfy 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). 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:

- (1) He or she has complied with the same requirements as those listed for naturalization applicants . . . ; or,
- (2) He or she has a high school diploma or general education development diploma (GED) . . . ; 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. . . .”

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.

The record reflects that, pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE Act application. The applicant was first interviewed on August 5, 2003, and then again on October 18, 2004.

On October 21, 2004, the director issued a notice to deny the application, stating that, on both occasions, the applicant was unable to understand or follow instructions when taking the United States History/Civics and English skills test. The director concluded that the applicant failed to meet his burden of proof and establish eligibility for permanent resident status.

Counsel appealed the decision, asserting that the director failed to issue a notice of intent to deny the application. Counsel also asserted that the director failed to recognize that the applicant qualified for the History and English exemption under 8 C.F.R. § 245a.17(a)(3). Counsel noted that during the applicant's interview he furnished a certificate of completion for the course Citizenship Preparation, which he took at an accredited institution, Houston Community College. Counsel also noted that the applicant furnished documentation of his enrollment in English as a Second Language (ESL: Communications Improvement I) at Houston Community College. After reviewing the appeal, the director *sua sponte* reopened the application. The director requested the applicant to submit proof of his completion of the ESL class as well as the curriculum and equivalent number of hours for the Citizenship Preparation class.

On May 23, 2005, the director issued a notice of intent to deny (NOID) the application, stating that on this date, the applicant was given a third and final interview in connection with his LIFE Act application. The director found that the applicant did not understand sufficient English to conduct the interview nor did he provide the requested documentation to exempt him from testing. The director informed the applicant that he was being afforded the opportunity to rebut and/or submit evidence supporting why his application should not be denied and that he had 30 days from the date of the NOID to respond.

In rebuttal to the NOID, counsel asserted that by completing a course of study in ESL-I and a class in Citizenship Preparation, the applicant has satisfied the requirements of basic citizenship skills under 8 C.F.R. § 245a.17(a)(3). Counsel furnished certificates of completion for the applicant's completion of ESL I and Citizenship Preparation. Counsel noted that the applicant completed these courses at a state-recognized, accredited institution, Houston Community College.

On June 27, 2005, the director issued a notice of denial to the applicant, stating that the applicant's documentation does not meet the criteria under 8 C.F.R. § 245a.17(a)(3). The director noted that under 8 C.F.R. § 245a.17(a)(3), an applicant must complete 40 hours of instruction in English and 40 hours of instruction in history and government. The director determined that the certificate the applicant furnished for his completion of the Citizenship Preparation course indicates that only 18 hours of instruction were completed. The director determined that the applicant failed to provide a course description or syllabus to determine whether the Citizenship Preparation course satisfies the history and government requirement. The director concluded that the application would be denied based on the findings in the NOID.

On appeal, counsel for the applicant asserts that the applicant meets the requirements of 8 C.F.R. § 245a.17(a)(3) because he completed the courses, ESL I (Communication Improvement I) and Citizenship Preparation, at Houston Community College, a state-recognized, accredited learning institution. Counsel resubmits the corresponding certificates of completion, showing that on October 22, 2004, the applicant completed a 48 hour course<sup>1</sup> entitled ESL I and on February 28, 2004, he

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<sup>1</sup> The Certificate of Completion for ESL I indicates that the applicant completed 4.8 CEUs (Continuing Education Units). According to the Houston Community College website ([www.hccs.edu](http://www.hccs.edu)), 10 hours in class equal one CEU.

completed a 18 hour course entitled Citizenship Preparation. Counsel asserts that the applicant has completed all the requirements to prove his eligibility for the English and history exemption under 8 C.F.R. § 245a.17(a)(3).

The applicant has not satisfied the alternative of the basic citizenship skills requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Counsel asserts that the applicant qualifies for the language and civics requirement exception under 8 C.F.R. § 245a.17(a)(3). To support his assertion, counsel cites to the first sentence of that regulation: "He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance." Counsel, however, fails to cite the part of the regulation that states, "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).

The record contains two certificates of completion from the Houston Community College-Northeast, one dated February 28, 2004, showing that the applicant completed 18 hours in the Citizenship Preparation course, and another, dated October 22, 2004, showing the applicant completed 48 hours in the Communications Improvement I course. Along with the certificates, counsel submitted a course syllabus for ESL I, Communications Improvement I, course. The course syllabus indicates that the objective of the course is to introduce non-native speakers to introductory American English. Despite the director's request, counsel failed to provide a course syllabus in connection with the Citizenship Preparation course the applicant completed on February 28, 2004. Moreover, the certificate of completion for this course indicates that the applicant only completed 18 hours of instruction. According to the regulation at 8 C.F.R. § 245a.17(a)(3), the applicant must show that he has completed or is attending courses that constitute at least 40 hours of instruction in both English and United States history and government.

The record shows that on July 26, 2005, the applicant furnished a letter from [REDACTED] Interim Director of Contract Training, Continuing Education and Adult Education, at Houston Community College-Northeast. Mr. [REDACTED] letter, dated July 20, 2005, states that the applicant was enrolled in a 40 hour Citizenship Preparation course at Houston Community College. The letter indicates that this course is designed for adults whose primary language is other than English and that the focus is on the oral component of the naturalization test, based on the 100 questions and answer list. It states that related topics include U.S. history and government, the judicial system, and U.S. institutions and culture. The letter states that the course started on June 4, 2005 and was scheduled to end on August 6, 2005, and the applicant had completed seven of the ten weeks of classes.

At the time of his third interview on May 23, 2005, the applicant had completed the 18 hour Citizenship Preparation course, but was not enrolled in the additional 40 hour course. The regulation at 8 C.F.R. § 245a.17(a)(3) requires that the applicant submit documentation to show that he has completed or is attending such classes at the time of filing the Form I-485, subsequent to filing the application, but prior to the interview, or at the time of the second interview. The applicant did not

submit evidence of this additional 40 hour class until he filed the current appeal. Accordingly, the director's decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act will be affirmed.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The applicant has failed to meet this burden.

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