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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]  
MSC 02 143 62983

Office: SAN FRANCISCO

Date: NOV 14 2008

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.

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

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 Director, San Francisco, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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, counsel contends that the applicant is exempt from having to pass the basic citizenship skills requirement because she meets the requirements under the regulation at 8 C.F.R. § 245a.17(a)(3). Counsel also asserts that the director failed to issue a Notice of Intent to Deny (NOID), which was prejudicial to the applicant.<sup>1</sup>

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).

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 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.

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<sup>1</sup> The AAO notes that the regulation at 8 C.F.R. § 245a.20(a)(2) has been amended such that a Notice of Intent to Deny is no longer required.

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).

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE Act application, on January 16, 2003, and again on June 19, 2006. On both occasions, the applicant failed to demonstrate a knowledge of civics and history of the United States. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 245a.3(b)(4)(iii)(A)(2). 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).

On appeal, counsel asserts that the applicant is exempt from having to pass the basic citizenship skills requirement because she meets the requirements under the regulation at 8 C.F.R. § 245a.17(a)(3). The record contains a declaration from [REDACTED], Account Clerk III, Business Services, Windsor Unified School District. The declarant stated that the applicant completed 90 hours of ESL instruction. The record also contains the applicant's certificate indicating that she completed ESL I at the institution on January 19, 1996. Neither document satisfies the regulatory requirements under 8 C.F.R. § 245a.17(a)(3). Both documents failed to indicate whether the school is a state recognized, accredited learning institution, the course of

study was for a period of one academic year (or the equivalent), and the curriculum included instruction in both English and United States history and government. Thus, the applicant has failed to satisfy the basic citizenship skills requirement.

Based on the above discussion, 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 AAO affirms the director’s decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

### Criminal Record

Beyond the decision of the director, an applicant is ineligible to adjust status to lawful permanent resident status under LIFE Legalization if he or she has committed three or more misdemeanors in the United States. Here, the applicant has committed three misdemeanors in the United States, which render her ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

The record reflects that on September 29, 1992, the applicant was charged with *driving under the influence of alcohol or drugs*, in violation of section 23152(b) of the Vehicle Code of California (Docket # [REDACTED]). On October 26, 1992, the applicant pled guilty and was convicted of *driving under the influence of alcohol or drugs*, a misdemeanor conviction. The applicant was sentenced to 2 days confinement, a fine of \$1,130.00, and referred to a Work Release program.

The record also reflects that on June 9, 1990, the applicant was charged with *unlawful to drive without license*, in violation of section 12500(a) of the Vehicle Code of California (Docket #TCR [REDACTED]). On February 5, 1992, the applicant pled nolo contendere and was convicted of *unlawful to drive without license*, a misdemeanor conviction. The applicant was sentenced and fined.

Finally, the record reflects that on June 24, 1985, the applicant was charged with *selling liquor to a minor*, in violation of section 25658(a) of the California Business and Professions Code Section 25658 (Docket # [REDACTED]). On April 8, 1986, the applicant was convicted of *selling liquor to a minor*, a misdemeanor conviction. The applicant was sentenced and fined.

Based on the above discussion, the applicant committed three misdemeanors and is ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a). Given this, she is ineligible for permanent resident status under Section 1104 of the LIFE Act.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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