

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

FILE:

MSC 02 039 63347

Office: NEW YORK

Date:

OCT 02 2008

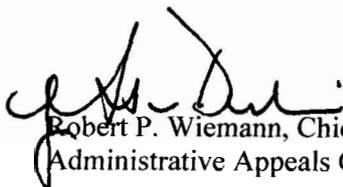
IN RE: Applicant:

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.


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, 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 had failed to establish that he satisfied the “Basic Citizenship Skills” requirement under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel submits medical letter to establish that the applicant can barely see and, therefore, is unable to read and learn English. Counsel asserts that the basic citizenship skills requirement should be waived.

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.

The applicant does not 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 (INA). An applicant can demonstrate that he meets the requirements of section 312(a) 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 interviewed twice in connection with his LIFE Act application, on February 2, 2004, and again on May 9, 2007. On both occasions, the applicant failed to demonstrate a minimal understanding of ordinary English. The applicant does not dispute

this on appeal. 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. The Basic 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:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States 8 C.F.R. § 245a.17(a)(2), or

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 8 C.F.R. § 245a.17(a)(3).

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 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 did not provide evidence of having attended, or attending, a state recognized, accredited learning institution in the United States pursuant to the regulation at 8 C.F.R. § 245a.17(a)(3). For the reasons discussed above, 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.

EXCEPTIONS

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 developmentally disabled.

The pertinent regulation regarding aliens to be granted an exception to the basic citizenship skills requirement and those circumstances under which the Secretary could consider a waiver of such requirement is contained at 8 C.F.R. § 245a.17(c) and states the following:

Exceptions. LIFE Legalization applicants are exempt from the requirements listed under paragraph (a)(1) of this section if he or she has qualified for the same exceptions as those listed for naturalization applicants under §§ 312.1(b)(3) and 312.2(b) of this chapter. Further, at the discretion of the Secretary, the requirements

listed under paragraph (a) of this section may be waived if the LIFE Legalization applicant:

- (1) Is 65 years of age or older on the date of filing; or
- (2) Is developmentally disabled as defined under 8 C. F. R. § 245a.1(v).

The record shows that the applicant was born on March 12, 1962, and that his LIFE Act application was filed on November 8, 2001. Therefore, the applicant is not eligible to the discretionary waiver described at both section 1104(c)(2)(E)(ii) of the LIFE Act and 8 C.F.R. § 245a.17(c)(1), as he was only 39 years of age on the date his LIFE Act application was filed.

The applicant does not qualify for a waiver on the basis of a developmental disability. The regulation at 8 C.F.R. § 245a.1(v) states:

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.

On appeal, counsel submits a medical declaration to establish that the applicant can barely see and, therefore, is unable to read and learn English. The medical declaration, dated April 11, 2007, is from [REDACTED], M.D., Director of Glaucoma Service, Westchester Medical Center. Dr. [REDACTED] stated that the applicant has been his patient since August 9, 2002, and is undergoing continuous treatment for a serious eye condition.

The record also contains a medical declaration, dated April 16, 2007, from [REDACTED], M.D., Professor, Cornea & External Disease, Department of Ophthalmology, Westchester Medical Center, New York Medical College. Dr. [REDACTED] stated that he has been treating the applicant since December 2002. He stated that the applicant was referred to him with bilateral corneal scarring secondary to chronic allergic conjunctivitis, the applicant has severe glaucoma and cataracts, as well as uveitis and dry eyes. At his May 2006 examination, Dr. [REDACTED] stated that the applicant's right eye was blind

with no vision and the left eye had poor vision in the range of 20/200. He stated that he expected to see the applicant in May 2007 with no difference in his condition.

Neither declaration contained any information regarding whether or not the applicant's condition manifested before he attained the age of twenty-two; results in substantial functional limitations in three or more major life activity; or reflects his 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 pursuant to 8 C.F.R. § 245a.1(v)(2), (4) and (5). Although [REDACTED] stated that he did not expect to see a change in the applicant's condition at his next exam, neither declarant specifically stated that the applicant's condition is likely to continue indefinitely pursuant to 8 C.F.R. § 245a.1(v)(3). Given the lack of relevant details, the evidence in the record is insufficient to establish that the applicant is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a developmental disability pursuant to 8 C.F.R. § 245a.17(c)(2).

For the reasons discussed above, 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. In addition, the applicant does not qualify for a waiver under section 1104(c)(2)(E)(ii) of the LIFE Act. Accordingly, 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.