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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 02 233 60272

Office: HOUSTON

Date: **OCT 30 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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. 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 District Director, Houston, 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 twice failed examinations meant to establish that the applicant had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act.

On appeal the applicant asserts he has taken an English as a Second Language class at Houston Community College.

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 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 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 312(a) of the 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).

Finally, an applicant may establish that he or she has met the requirements of section 312(a) of the Act by providing evidence that he or she has attended or is attending a state recognized, accredited learning institution in the United States, following a course of study which spans one academic year and that includes 40 hours of instruction in English and United States history and government. The applicant may provide documentation of such on the letterhead stationary of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3).

The 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: to pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit evidence that he or she has attended or is attending a state-recognized, accredited learning institution in the United States, following a course of study which spans an academic year and that includes 40 hours of instruction in English and United States history and government. *See* 8 C.F.R. § 245a.17(b).

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

On April 20, 2004, the applicant was interviewed in connection with his LIFE Act application. He failed to demonstrate a minimal understanding of ordinary English during the examination portion of the interview.

The director notified the applicant that he had failed the basic citizenship skills examination at his April 20, 2004, LIFE interview and that he would have a final re-examination in six months.

On October 20, 2004, the applicant again failed to demonstrate a minimal understanding of ordinary English at the second LIFE interview.

On October 27, 2004, the director denied the application based on the reasons set out in the NOID.

On appeal, the applicant asks that CIS reconsider his application.

The record verifies that the applicant did not pass the basic citizenship skills examination during either interview, nor has the applicant taken 40 credit hours of English and United States history and government.

The regulations state that to fulfill the LIFE Act requirements relating to basic citizenship skills an applicant may 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, he does not qualify for either of the exceptions listed in section 1104(c)(2)(E)(ii) of the LIFE Act.

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 AAO will not disturb the director’s decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.