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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:



Office: NEW YORK

Date:

OCT 31 2008

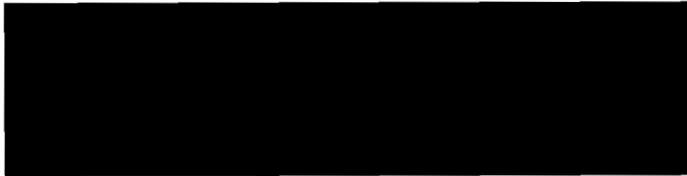
MSC 01 339 60479

IN RE: Applicant:



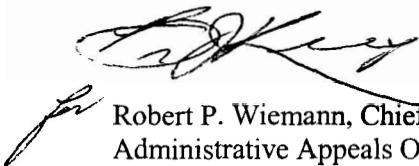
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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.


for 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 in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal the applicant asserts that he enrolled in English language classes prior to his initial examination of basic citizenship skills, thereby satisfying the statutory requirement. Alternatively, the applicant contends that he should be retested.

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 – 312.3.

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 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 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. *See* 8 C.F.R. § 245a.17(b).

On September 4, 2001 the applicant, a native of Ecuador, filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On February 5, 2004 the applicant was interviewed for LIFE legalization. He failed to demonstrate a basic understanding of ordinary English and a basic knowledge of U.S. history and government during the examination portion of the interview.

On March 12, 2004 the director issued a Notice of Intent to Deny (NOID), advising the applicant that the second and final examination of his basic citizenship skills was scheduled for August 27, 2004.

At his re-examination on August 27, 2004, the applicant again failed to demonstrate basic English literacy and basic knowledge of U.S. history and government.

On June 2, 2007 the director denied the application on the ground that the applicant had not satisfied the basic citizenship skills requirement for LIFE legalization.

On appeal the applicant asserts that his enrollment in English language classes prior to the first examination of his basic citizenship skills satisfies the basic citizenship skills requirement set forth at 8 C.F.R. § 245a.17(a)(3). As evidence of his English language classes he submits a letter from Zoni Language Centers in Jackson Heights, New York, dated January 28, 2004. According to the applicant, his failure of the two examinations in 2004 was attributable to nervousness and illness. The applicant suggests that he be given another chance to pass the examination.

The letter from Zoni Language Centers is the only evidence the applicant submitted on appeal relating to the basic citizenship skills requirement for LIFE legalization. In this letter, dated January 28, 2004, Academic Director [REDACTED] certified that the applicant was enrolled in the English as a Second Language (ESL) program from March 3 to July 11, 2002, successfully completing courses 101, 102, and 103. Ms. [REDACTED] stated that the Zoni Language Centers offer English language instruction, ranging from beginner to advanced, at five locations in the metropolitan New York area.

The foregoing letter does not comport with the requirements of 8 C.F.R. § 245a.17(a)(3). It states only that the applicant completed three ESL courses over a four-month period, without indicating that the classes comprised a course of study encompassing one academic year and 40 hours or more of instruction, or that the classes included a U.S. history and government component. The letter does not identify the Zoni Language Centers as a state recognized, accredited learning institution, and does not show the applicant's A-number. Furthermore, the letter was not submitted to the district office by the time of the applicant's second interview and examination on August 27, 2004, which was the latest date allowed in the regulation. Though the letter is dated January 28, 2004, which was before the first examination of the applicant's basic citizenship skills, there is no way to verify the date appearing on the letter and there is no evidence in the record that the letter was submitted by the applicant at either his first interview and examination on February 5, 2004, or at his second interview and examination on August 27, 2004. In fact, there is no evidence that the letter from Zoni Language Centers was submitted at any time prior to the appeal, which was filed on June 26, 2007.

Thus, the applicant has not satisfied the basic citizenship skills for LIFE legalization under any of the three options set forth in the regulations. He did not pass either of his examinations of basic English language ability and knowledge of U.S. history and government, in accordance with 8 C.F.R. § 245a.17(a)(1). He did not provide a high school diploma or GED from a school in the United States, in accordance with 8 C.F.R. § 245a.17(a)(2). Nor did the applicant show at the time of his second interview, on August 27, 2004, that he had attended, or was 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, in accordance with 8 C.F.R. § 245a.17(a)(3).

The applicant is not 65 years old or older and there is no evidence in the record that he is developmentally disabled. Thus, the applicant 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 he has met the basic citizenship skills requirement as described at 1104(c)(2)(E) of the LIFE Act. Accordingly, he is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed, and the application denied.

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