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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC 01 362 61829

Office: NEW YORK

Date: SEP 15 2008

IN RE: Applicant: [Redacted]

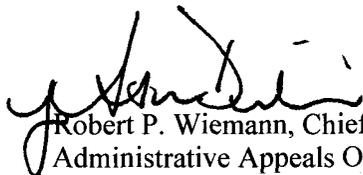
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the 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 District 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 a copy of a Form N-648, Medical Certification for Disability Exceptions, in the applicant's name. Counsel asserts that the applicant has dyslexia and cognitive learning process impairment in reading and writing.

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 11, 2004, and again on September 3, 2004. 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 Attorney General 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 Attorney General 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 Attorney General, 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 June 26, 1955, and that his LIFE Act application was filed on September 27, 2001. Therefore, the applicant is not eligible for 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 46 years of age on the date his LIFE Act application was filed. It must now be determined whether the applicant is qualified for either an exception under 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b) on the basis of a physical or mental impairment, or a discretionary waiver under 8 C.F.R. § 245a.1(v) on the basis of a developmental disability.

Physical or Mental Impairment

The first issue to be addressed is whether the applicant has established he is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable physical or mental impairment.

The regulation at 8 C.F.R. § 312.1(b)(3) states, in pertinent part:

The [basic citizenship skills requirement] shall not apply to any person who is unable, because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language For purposes of this paragraph, the term medically determinable means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency as outlined in paragraph (c) of this section.

All persons applying for naturalization and seeking an exception from the requirements of 8 C.F.R. § 312.1(a) and paragraph (a) of this section based on the disability exceptions must submit Form N-648, Medical Certification for Disability Exceptions, to be completed by a medical or osteopathic doctor licensed to practice medicine in the United States 8 C.F.R. § 312.2(b)(2)

The applicant has not established that he has a medically determinable impairment as defined in the pertinent regulations. On appeal, the applicant submitted a Form N-648, dated August 25, 2004, as required under 8 C.F.R. § 312.1(b)(3). The Form N-648 was completed by [REDACTED] [REDACTED] indicated that the applicant was examined on August 17, 2004, and diagnosed the

applicant with dyslexia and cognitive learning/process impairment. In a separate declaration, dated August 18, 2004, [REDACTED] stated that the applicant has significant learning disabilities since childhood and repeated second grade three times. He also stated that the applicant is functionally illiterate in his own language and is only able to read five words out of twenty in his native language. He further stated that the applicant suffers from attention deficit disorder, which is also characterized by elements of dyslexia. [REDACTED] indicated that the applicant is unable to learn in his native language as well as the English language, to learn new skills, or to complete application forms in Portuguese and English. Finally, [REDACTED] indicated that the applicant has not seen a physician in about 10 years. Based on [REDACTED]'s statements, the applicant appears to suffer from a physical or mental impairment.

The record also contains a Form I-693 Medical Examination, dated August 22, 2001, signed by [REDACTED]. Upon examination of the applicant, [REDACTED] indicated that he found "no apparent defect, disease or disability." There is no indication that the applicant has a condition resulting from anatomical, physiological, or psychological abnormalities which can be medically shown to have resulted in functioning so impaired as to render the applicant unable to demonstrate an understanding of the English language. There is nothing in the record to reconcile the discrepancy between the statements of [REDACTED] and [REDACTED]. In one instance, the applicant does not have a physical or mental disability; whereas, in another instance, the applicant does suffer from a mental impairment. The conflicting medical diagnoses cast doubt upon the veracity of the applicant's claim of physical or mental impairment.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above inconsistencies. Therefore, the applicant has not established that he is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable physical or mental impairment.

Developmentally Disabled

The next issue to address is whether the applicant has established he is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable 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 evidence in an attempt to establish that the applicant is eligible for an exception to the basic citizenship skills requirement based on his suffering from a disability which is attributable to a mental impairment due to a learning disability from childhood. However, there is no evidence that the applicant's condition results in substantial functional limitations in three or more of the following areas of major life activity pursuant to 8 C.F.R. § 245a.1(v)(4). In addition, there is no evidence that the applicant suffers from a disability resulting in 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)(5). 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 medically determinable developmental disability pursuant to 8 C.F.R. § 245a.1(v). In addition, the previously noted discrepancies between the applicant's Forms N-648 cast doubt on the credibility of the applicant's claim to suffer from a disability.

For the reasons stated above, it cannot be concluded that the applicant suffers from a physical or mental disability or impairment that would allow him to be considered developmentally disabled so as to qualify for the exceptions contained at 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b). As the applicant has failed to establish that he is developmentally disabled, he is not eligible for a discretionary waiver under 8 C.F.R. § 245a.1(v).

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.