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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 345 60091

Office: HOUSTON

Date:

SEP 30 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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

On appeal, counsel assets that the applicant has satisfied the basic citizenship requirements because he has enrolled in a course of study at a learning institution and satisfies the requirements under 8 C.F.R. § 245a.17(a)(2). Counsel submits additional evidence on appeal.

The issue in this proceeding is whether the applicant has established that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

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.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the requirements for aliens who are at least 65 years of age or developmentally disabled.

An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act 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).

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 “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 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 first interviewed in connection with his LIFE Act application, on June 22, 2005. On that occasion, the applicant failed to demonstrate a minimal understanding of English, and knowledge and understanding of history and government of the United States. The applicant does not dispute this on appeal. The director granted the applicant an additional 6 months to prepare for a second and final examination. The applicant was scheduled for re-examination on March 1, 2006. However, again the applicant failed to demonstrate a minimal knowledge of English, and civics and history of the United States. At both interviews, the applicant was unable to understand sufficient English for the interview to be conducted. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). 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, the applicant admits that he had twice failed to pass the basic citizenship skills requirement. Counsel asserts, however, that the applicant has enrolled in an English as a Second Language class, and therefore, he has met the requirement of 8 C.F.R. § 245a.17(a)(2). Counsel submits a certificate of completion from Neighborhood Centers Inc., issued on April 27, 2002,

stating that the applicant successfully completed 40 contact hours of English as a Second Language (ESL) / Civics Classes.

Contrary to counsel's assertion, the applicant has not provided evidence that he has attended or is attending a course of study at any of these institutions for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) as required under the provisions of 8 C.F.R. § 245a.17(a)(3). The applicant submitted a certificate of completion from Neighborhood Centers Inc., stating that the applicant has completed 40 contact hours of English as a Second Language (ESL) / Civics Classes. However, there is no evidence that the course(s) offered by the Neighborhood Centers Inc. satisfies the "basic citizenship skills" requirement. Also, the record does not indicate evidence of enrollment in a course that satisfies the requirements under 8 C.F.R. § 245a.17(a). 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, and does not meet the exception under 8 C.F.R 245a.1(v). 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.

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