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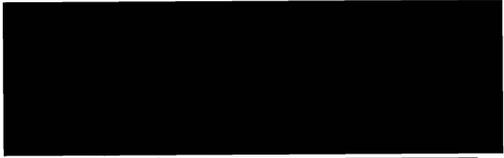
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: Dallas

Date:

AUG 02 2006

MSC 01 306 60265

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 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, (Dallas, 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 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, counsel asserts that the applicant had submitted evidence that he was enrolled in an accredited program following the requisite course of study consisting of classes in English and the history and government of the United States, and as such he is exempt from the English and U.S. history and government examinations administered by the Service. In the alternative, counsel asserts that the applicant is exempt from these examinations based on his lengthy, continuous residence in the United States.

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 April 29, 2002, the applicant was interviewed in connection with his LIFE Act application and failed to demonstrate a minimal knowledge of English and U. S. history and government.

The applicant was provided a second interview on June 17, 2003. During this interview, he again failed to demonstrate a minimal knowledge of U. S. history and government. The notes from the second interview do not specify whether the applicant failed or passed the English portion of his second test.

On March 8, 2004, the director issued the notice of intent to deny (NOID) in which she indicated that the applicant had failed to demonstrate "a knowledge and understanding of the fundamentals of English" at his April 29, 2002 and June 17, 2003 LIFE interviews. As such, the director intended to deny his application to adjust to permanent resident status under section 1104 of the LIFE Act.

During March 2004, in response to the NOID, the applicant provided evidence intended to demonstrate that he was 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.

On May 7, 2004, the director denied the application for the reasons set out in the NOID.

On appeal, counsel indicates that the applicant enrolled in the requisite course of study, including English and U.S. history and government instruction, prior to the second interview "which took place on *March 7, 2004*" and as such is exempt from the English and U.S. history examinations. Counsel also asserts that the applicant was exempt from these examinations based on his lengthy, continuous residence in the United States.

The second interview, in fact, took place during June 2003, not March 2004. The regulations specify that to fulfill the LIFE Act requirements relating to a minimal understanding of English and an understanding of U.S. history and government by attending certain state-accredited programs, the applicant must enroll in the program and provide documentation of having done so to the Service prior to or during the second LIFE interview.¹ *See* 8 C.F.R. § 245a.17(b). The record establishes that the

¹ In the denial, the director erred and indicated that, during March 2004, the applicant submitted evidence which suggested that *in the future* he would begin an accredited English and U.S. history program. In fact, during March 2004, the applicant submitted evidence which indicated that he was currently enrolled in one such program, (which began after

applicant failed to enroll in a course of study that met the regulatory requirements described at 8 C.F.R. § 245a.17(a)(3) prior to the second interview.

The director indicated in the NOID and in the denial that the applicant failed to demonstrate a basic knowledge of English at the first and second LIFE interviews. The director does not make reference to the U.S. history and government portion of the applicant's examinations in her decision. However, the record specifies that the applicant failed the U.S. history and government portion of the tests at both interviews, whereas the notes from the June 2003 interview are unclear regarding whether the applicant failed the English portion of his second test.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center or District Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

It is, thus, noted here, in contrast to the director's decision, that the record establishes that the applicant failed to demonstrate a knowledge and understanding of the history and government of the United States as required under section 1104(c)(2)(E)(i) of the LIFE Act.

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. The statute and regulations do not provide for an exception based solely on a showing of lengthy continuous residence in the United States, as counsel suggests on appeal. The applicant does not have a high school diploma or a GED from a school in the United States.

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. Thus, he is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act.

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

the June 2003 second interview), as well as evidence that he would begin an additional English and civics program in the future.