



U.S. Citizenship
and Immigration
Services

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APR 11 2007

FILE:

[Redacted]

Office: Houston

Date:

MSC 02 134 60315

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:

[Redacted]

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, 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 failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel contends that the applicant is attending a state recognized, accredited learning institution and, therefore, meets the basic citizenship requirements.

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 above requirements for aliens who are at least 65 years of age or developmentally disabled. The applicant, who is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act.

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).

The director, in a notice of intent to deny, stated that the applicant appeared for permanent residence interviews on October 8, 2004 and March 1, 2006, and each time failed the section 312 examination relating to knowledge of history and government and a minimal understanding of English.¹ The applicant was given the second opportunity to pass the examination on March 1, 2006, pursuant to 8 C.F.R. § 245a.17(b). That regulation states:

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)

¹ The reference to October 8, 2004 appears to be erroneous. The director’s notes refer to the applicant initially having failed the section 312 test on June 22, 2005. Neither the applicant nor counsel has challenged the statement that the applicant reported twice for interviews and failed the section 312 test each time.

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.

No provision exists in the regulations to allow for a third attempt to pass the examination at a permanent residence interview. Thus, the applicant has not demonstrated that he meets the section 312 requirements by speaking and understanding English and demonstrating knowledge of history and civics during an interview for permanent resident status.

It is noted that there is also no evidence that the applicant has passed a standardized section 312 test. 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 .

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 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 in this case has not provided a high school diploma or a GED from a United States school. In an April 5, 2006 response to the notice of intent to deny, counsel furnished a January 10, 2006 letter from the Region VI Education Service Center in Huntsville, Texas. The letter attests to the applicant’s attendance at an “English as a Second Language” course since July 5, 2005. As stated above, evidence of enrollment in a qualifying course would have to have been submitted no later than the date of the interview, in this case March 1, 2006, to be considered. Therefore, due to its untimely submission, the letter cannot be accepted as evidence of meeting the basis citizenship skills requirement. It is noted that the letter refers only to the study of English, and does not mention civics instruction. It is also not clear that the learning institution is state recognized and accredited. Therefore, the letter, even if it had been submitted timely, would not constitute sufficient evidence to satisfy the citizenship skills requirement of 8 C.F.R. § 245a.17(a)(2).

Counsel’s statements on appeal have been considered. However, the pertinent regulations at 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that an applicant must submit evidence demonstrating compliance with the basic citizenship skills requirement in that period from the date the Form I-485 LIFE Act

application is filed to the date the second interview is conducted. The applicant in this particular case failed to submit evidence to establish compliance with the basic citizenship skills requirement in that period.

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 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.