

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

FILE: [REDACTED]
MSC 02 250 63791

Office: NEW YORK

Date: DEC 03 2007

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, 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” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel contends that the director erroneously denied the instant application. Counsel asserts that the test did not comply with the regulations as the applicant was given only two sentences to write instead of three sentences, as required. Counsel requests the applicant be given a new test that complies with the regulations.

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.

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. Nor does he 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 (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).

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 interviewed twice in connection with his LIFE Act application, on April 28, 2004, and again on October 29, 2004. In the Notice of Decision, dated March 19, 2005, the director stated that the applicant failed to demonstrate a minimal understanding of ordinary English on both occasions. 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, counsel contends that the applicant’s second and final test was not offered in accordance with the regulations. During the second interview, counsel asserts that the applicant was only asked to write two sentences, instead of three sentences. Counsel cites an Immigration and Nationality Services (now Department of Homeland Security or DHS) internal agency document.¹ The

¹ Counsel provided a copy of a DHS internal agency document. 66 No. 15 Interpreter Releases 428, Appendix III, 442 (April 17, 1989).

document states that to pass the reading test, the applicant should be able to read at least one of three given sentences. To pass the writing test, the applicant should be able to write at least one of three given sentences.

The record reflects that, during the second interview, the applicant answered correctly nine of ten United States history questions. The record also indicates that the applicant read correctly at least one of three sentences. The record reflects that the applicant was given an opportunity to write two sentences, in which there were several spelling errors. The record does not indicate whether the applicant was given an opportunity to write a third sentence.

Counsel refers to an internal agency document as support for his position. The internal agency document governs procedural matters of adjudication of petitions and applications for admission. These documents are not binding; they are merely internal operating procedures. The interviewing officer has discretion in administering the reading and writing portions of the applicant's interview. The internal agency document provided a list of twenty (20) sample sentences. These sample sentences were to be used as guidance to ensure that no extraordinary conditions were imposed on the applicant.

In the instant case, the applicant was asked to write "*George Washington was the first president.*" The applicant misspelled four of six words, as indicated by italics. The applicant was also asked to write "*I came to this office by train.*" The applicant misspelled two of seven words, as indicated by italics. Based on these attempts, the applicant failed to demonstrate competency in writing English. Therefore, the applicant did not satisfy the basic citizenship skills requirement.

Beyond the decision of the director, the record reflects that on April 30, 1995, the applicant was charged with *operating a motor vehicle while under the influence of alcohol or drugs* in violation of section 1192.2 of the New York Vehicle and Traffic Law. On August 23, 1995, the applicant was convicted of *operating a motor vehicle while under the influence of alcohol or drugs* in violation of section 1192.2, a misdemeanor, in the First District Court of Nassau County (Docket # [REDACTED]). Section 1193.1(b) of the New York Vehicle and Traffic Law classifies the penalty for violating a misdemeanor as a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1000.00) or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment. The applicant was sentenced to a fine of five hundred dollars (\$500.00), license revocation and probation of three (3) years. This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

The record also indicates that on May 20, 1999, the applicant was charged with *operating a motor vehicle while under the influence of alcohol or drugs* in violation of section 1192.2 of the New York Vehicle and Traffic Law. The applicant was convicted of *operating a motor vehicle while under the influence of alcohol or drugs* in violation of section 1192.2, a class E felony, in the Superior Court of Nassau County (Case # [REDACTED]) on November 3, 1999. Section 1193.1(c) of the New York Vehicle and Traffic Law classifies the penalty for violating section 1192.2, after having been convicted for a violation of section 1192.2 within the preceding ten years, as a fine of not less than

one thousand dollars (\$1000.00) nor more than five thousand dollars (\$5000.00) or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. The applicant was sentenced to a fine of one-thousand dollars (\$1000.00), license revocation and probation for five (5) years. This single felony conviction renders the applicant ineligible to adjust status to legal permanent resident under LIFE legalization pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

Therefore, based on the reasons stated 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. Furthermore, due to the applicant's felony conviction, the applicant is ineligible under to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a). 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.