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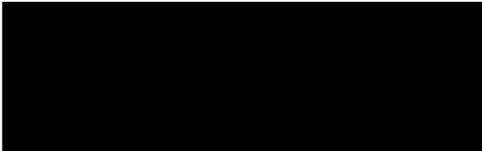
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IN RE: Applicant:



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 District Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate knowledge of English and of the government and history of the United States.

On appeal, counsel contends that the director wrongfully denied the instant application. Counsel asserts that the applicant submitted evidence on November 10, 2004, that demonstrates the applicant completed the hours of education for English, U.S. history and government. Counsel submits a copy of a U.S. Postal Service receipt, which is stamped as received on November 16, 2004, as proof of mailing the evidence to U.S. Citizenship and Immigration Services (USCIS).

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 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 June 10, 2003, and again on June 7, 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). 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).

In a January 27, 2005, Notice of Decision, the director stated that the applicant provided no new evidence in response to the director's Notice of Intent to Deny dated October 25, 2003. On appeal, counsel contends that the applicant submitted evidence in response to the Notice of Intent. As proof, counsel submitted a copy of a return receipt addressed to USCIS and stamped as received on November 16, 2004. Counsel provided copies of evidence previously submitted in the instant case. No new evidence was submitted.

The record contains the following relevant evidence.

A March 11, 2004, letter from ESL instructor, [REDACTED] who stated that the applicant attended ESL classes in Brownwood, Texas through Co-Op 48 ABE in San Angelo and Howard College in Big Spring. She further stated that they studied some English, mathematics, government, history and civics. [REDACTED] certified that the applicant attended a total of forty-one (41) hours in August, September and October. Pursuant to 8 C.F.R. § 245a.17(a)(3), the educational institution must certify the applicant's attendance by certification on letterhead stationery. [REDACTED] letter is not on official letterhead stationery from the college. Therefore, it cannot be concluded that the institution has certified the applicant's attendance.

The applicant submitted a 2003/2004 student profile from Howard College San Angelo Co-Op 48 Adult Basic Education. The document reflects the applicant's progress assessment from September 4, 2003 to September 25, 2003. The document does not indicate whether the course of study is for a period of one academic year or whether the curriculum includes at least 40 hours of instruction in English and United States history and government.

The applicant submitted a student information application from Howard College San Angelo Co-Op 48 Adult Basic Education. The document merely provides the applicant's background information, completed education and student goals. The document does not indicate whether the course of study is for a period of one academic year or whether the curriculum includes at least 40 hours of instruction in English and United States history and government.

The applicant also submitted an undated spreadsheet and document that indicate the applicant completed 33 hours of instruction and 8 hours of literacy, respectively, with ESL instructor, Ms. [REDACTED]. Neither the spreadsheet nor the document is on official letterhead from the institution. As such, it cannot be concluded that the institution has certified the applicant's attendance under 8 C.F.R. § 245a.17(a)(3). Furthermore, the evidence fails to indicate whether the course of study was for a period of one academic year. The spreadsheet indicated that the applicant completed the course of study in less than 2 months, August 25th through October 6th.

Although the record tends to indicate that the applicant submitted the above documents prior to his second interview, the evidence is not sufficient to satisfy the basic citizenship skills requirement for the above stated reasons.

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 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.