



U.S. Citizenship
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FILE:



Office: NEW YORK

Date:

NOV 14 2007

MSC 02 022 61121

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, 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 asserts that the applicant should not be subjected to the exam requirement due to his medical condition. Counsel contends that the applicant is eligible for a waiver of the English, history and civics exam. Counsel submitted a Form N-648, Medical Certification for Disability Exceptions in support of the appeal.

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 pertinent regulation regarding aliens to be granted an exception to the basic citizenship skills requirement and those circumstances under which the Attorney General could consider a waiver of such requirement is contained at 8 C.F.R. § 245a.17(c) and states the following:

Exceptions. LIFE Legalization applicants are exempt from the requirements listed under paragraph (a)(1) of this section if he or she has qualified for the same exceptions as those listed for naturalization applicants under §§ 312.1(b)(3) and 312.2(b) of this chapter. Further, at the discretion of the Attorney General, the requirements listed under paragraph (a) of this section may be waived if the LIFE Legalization applicant:

- (1) Is 65 years of age or older on the date of filing; or
- (2) Is developmentally disabled as defined under 8 C. F. R. § 245a.1(v).

The record shows that the applicant was born on April 3, 1948, and that his LIFE Act application was filed on October 22, 2001. Therefore, the applicant is not eligible to the discretionary waiver described at both section 1104(c)(2)(E)(ii) of the LIFE Act and 8 C.F.R. § 245a.17(c)(1), as he was only 53 years

of age on the date his LIFE Act application was filed. It must now be determined whether the applicant is qualified for either an exception under 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b) on the basis of a physical or mental impairment, or a discretionary waiver under 8 C. F. R. § 245a.1(v) on the basis of a developmental disability.

Physical or mental impairment

The first issue to be addressed is whether the applicant has established he is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable physical or mental impairment.

The regulation at 8 C.F.R. § 312.1(b)(3) states, in pertinent part:

The [basic citizenship skills requirement] shall not apply to any person who is unable, because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language For purposes of this paragraph, the term medically determinable means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency as outlined in paragraph (c) of this section.

The [basic citizenship skills requirement] shall not apply to any person who is unable to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States because of a medically determinable physical or mental impairment, that already has or is expected to last at least 12 months For the purposes of this paragraph, the term medically determinable means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual to be unable to demonstrate the knowledge required by this section or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications.

The applicant has not established that he has a medically determinable impairment as defined in the pertinent regulations. On appeal, the applicant submits a Form N-648 prepared by psychiatrist Emile Borde, which states the applicant suffers with four mental impairments: learning disorder, expressive language disorder, mild mental retardation, and specific phobia. According to the form, Dr. Borde evaluated the applicant over a two week period. He failed to include test reports to substantiate his diagnosis. The record contains a Form I-693 Medical Examination, dated January 13, 2004, signed by

██████████ M.D., which indicates the examining physician found “no apparent defect, disease or disability.” The applicant has not reconciled these two disparate medical evaluations. One physician diagnosed the applicant with four mental impairments, whereas another found none. The applicant has not established that he is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable physical or mental impairment.

Developmentally disabled

The next issue to address is whether the applicant has established he is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable developmental disability.

The regulation at 8 C. F. R. § 245a.1(v) states:

The term developmental disability means a severe, chronic disability of a person which:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
- (5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

On appeal, counsel contends that the applicant is eligible for a waiver of the basic citizenship skills requirement. On July 26, 2005, counsel submitted a Form N-648, Medical Certification for Disability Exceptions, in an attempt to establish that the applicant is developmentally disabled and eligible for an exception. The Form N-648 is dated July 14, 2005, and is signed by Dr. ██████████. At part 2(a) of the Form N-648, where physicians are asked to provide their clinical diagnosis of the applicant's impairment and describe the impairment, Dr. ██████████ wrote “Patient presents with a positive history of a learning disorder. He reports struggling to complete 1st grade The mental status exam performed identifies a marginal IQ, as well as moderate to severe impairment in areas of retention and comprehension of information presented to him He is unable to understand abstract concepts and has difficulty with expressive language.”

At part 3 of the Form N-648, where physicians are asked to provide detailed information on the connection between the impairment(s) and the applicant's inability to learn and/or demonstrate knowledge of English and/or U.S. history and civics, Dr. [REDACTED] wrote the following:

Mr. [REDACTED] is unable to learn new information. Information presented to him must be clear and concise; otherwise he does not grasp the content. Learning a new language, history of our nation as well as politics and current events is very difficult for him. There is a clear path of impairment at the brain level. His strengths may be found in the area of motor skills and manual labor. Hence, his work history as a factory worker, shoe repair and current employment recycling bottles. He is chronically anxious and chooses to live a simple lifestyle so as to avoid environmental distractions. Several testing tools were applied in his native language (Spanish). Results demonstrate moderate level of impairment as well as high levels of anxiety. It is important to note that he has not applied for a New York state driver's license due to his marked level of anxiety related to taking the written exam.

If we accepted Dr. [REDACTED] statements at face value¹, the applicant has a disability which is attributable to a mental impairment that manifested in the applicant as a young child and continues to affect the applicant. The results of the disability affect the applicant's expressive language and learning. However, the applicant has not clearly established that his disability results in a third area of substantial functional limitation as required under 8 C. F. R. § 245a.1(v)(4). Furthermore, there is no evidence that the applicant's disability results in his need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated as required under 8 C. F. R. § 245a.1(v)(5).

For the reasons stated above, it cannot be concluded that the applicant suffers from a physical or mental disability or impairment that would allow him to be considered developmentally disabled so as to qualify for the exceptions contained at 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b). As the applicant has failed to establish that he is developmentally disabled, he is not eligible for a discretionary waiver under 8 C. F. R. § 245a.1(v).

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

¹ The AAO notes that the record contains the results of a medical examination of the applicant in which the physician found "no apparent defect, disease or disability."

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 February 24, 2004, and again on September 24, 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 May 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 February 24, 2004.

For the reasons discussed above, the applicant does not satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) of the LIFE Act because he has failed to demonstrate that he “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.”

As previously discussed, the applicant failed to meet the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at his two interviews he did not demonstrate a minimal understanding of English and a minimal knowledge of United States history and government.

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.