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U.S. Citizenship
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FILE: [Redacted] Office: NEW YORK Date: **APR 29 2008**
- consolidated herein]
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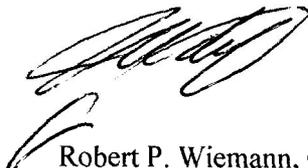
IN RE: Applicant: [Redacted]

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


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 (director), New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further action and consideration.

The director denied the application because the applicant had twice failed examinations meant to establish that he had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel for the applicant submits a brief statement.

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 regulations provide that 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 June 11, 2002, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, under section 1104 of the LIFE Act.

The record confirms that, on April 22, 2004, and again on October 22, 2004, the applicant failed to demonstrate that he met the basic citizenship skills requirement, as described at 1104(c)(2)(E) of the LIFE Act. Specifically, the applicant failed to demonstrate a minimal understanding of Basic English at both interviews. Therefore, the director denied the application on October 22, 2004.

On appeal, counsel asserts that a number of important factual and legal errors occurred at the interview, but does not specifically state what those errors were. Counsel indicates that "mis-hearing and mis-interpreting of questions and answers ... created apparent discrepancies and affected the outcome of the interview...;" the applicant "had difficulty understanding the particular speech of the officer...the officer had difficulty understanding the speech of the applicant..." and, "the answers given [by the applicant] were essentially correct but the applicant was nervous." Counsel has provided no new information on appeal to contradict the results of the interview.

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.

It is noted that when applying for **temporary** resident status under the *Immigration Reform and Control Act of 1986*, an applicant is not required to demonstrate a basic knowledge of English and U.S. history and government. It is only after such applicant has qualified as a temporary resident and is attempting to adjust to **permanent** resident status that he or she must fulfill requirements relating to English and U.S. history and government. *See* 8 C.F.R. § 245a.3(b)(4)(i)(A).

Where the director finds an applicant ineligible for permanent resident status under section 1104 of the LIFE Act, the director must then consider the applicant's eligibility for adjustment of status to that of a temporary resident. Therefore, the case is remanded so that the director might determine whether the applicant is eligible for temporary resident status pursuant to the regulation at 8 C.F.R. § 245a.6.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further consideration and action in accordance with the foregoing, and the entry of a decision regarding the applicant's eligibility for temporary resident status.