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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC 03 214 60080

Office: HOUSTON

Date: **AUG 01 2008**

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 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 District Director, Houston, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. **The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.**

The director denied the application because the applicant failed to establish that he satisfied the basic citizenship skills requirement under section 1104(c)(2)(E) of the LIFE Act. The director provided the applicant two opportunities to pass the English literacy and/or the United States history and government tests. The applicant failed to pass the tests or submit relevant evidence as described in the regulations at 8 C.F.R. § 245a.17.

On appeal, counsel for the applicant asserts that the procedure for determining whether an applicant meets the citizenship skills requirement is subjective and arbitrary. Counsel asserts that the applicant meets the requirements of 8 C.F.R. § 245a.17(3) because he completed the course, Fundamentals of English as a Second Language, at Houston Community College and submits the corresponding certificate of completion.

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:

- (1) He or she has complied with the same requirements as those listed for naturalization applicants . . . ; or,
- (2) He or she has a high school diploma or general education development diploma (GED) . . . ; or,
- (3) 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. . . .”

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.

The record reflects that, pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE Act application. The applicant was first interviewed on October 19, 2004, and then again on June 22, 2005.

On June 24, 2005, the district director issued a Notice of Intent to Deny (NOID) the application, stating that, on both occasions, the applicant was unable to understand sufficient English to be placed under oath. The director noted that on June 22, 2005, the applicant submitted documentation showing that he attended Houston Community College in an effort to improve his English skills but that the 18 hours of credit granted to the applicant for citizenship preparation was not sufficient to exempt him from the

English and civics requirement. The director concluded that the applicant failed to demonstrate his understanding of English and knowledge of history and government of the United States. The director informed the applicant that he was being afforded the opportunity to rebut and/or submit evidence supporting why his application should not be denied and that he had 30 days from the date of the NOID to respond. The applicant did not respond to the NOID.

On September 6, 2005, the director denied the application, finding that the applicant failed to respond to the NOID during the allotted time and failed to overcome the grounds for denial as stated in the NOID.

On appeal, counsel for the applicant asserts that the procedure for determining whether an applicant meets the citizenship skills requirement is subject and arbitrary. Counsel asserts that the applicant meets the requirements of 8 C.F.R. § 245a.17(3) because he completed the course, Fundamentals of English as a Second Language, at Houston Community College. Counsel submits the corresponding certificate of completion, showing that, on August 6, 2005, the applicant completed a 40-hour course called Citizenship Preparation (U.S. Government & History), along with a letter from Houston Community College. Counsel also submits a certificate of completion, dated October 20, 2004, for an 18 hour course called Citizenship Preparation (History & Government). Counsel asserts that, pursuant to 8 C.F.R. § 245a.17(3), the applicant meets the requisite citizenship skills because he completed two courses at Houston Community College, an institution that is certified and approved by the State of Texas.

The applicant has not satisfied the alternative of the basic citizenship skills requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Counsel asserts that the applicant qualifies for the language and civics requirement exception under 8 C.F.R. § 245a.17(3). To support his assertion, counsel cites to the first sentence of that regulation: that “[h]e or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance.” Counsel, however, fails to cite the rest of the regulation, which states that:

“[t]he 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. The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution *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. ...*” 8 C.F.R. § 245a.17(3). (Emphasis added).

The record contains two certificates of completion from the Houston Community College-Northeast, one dated October 20, 2004, showing that the applicant completed 18 hours of history and government, and another, dated August 6, 2005, showing the applicant completed 40 hours of U.S. government and history instruction. Along with the certificates, counsel submits a letter dated July 8, 2005, from [REDACTED], Interim Director of Contract Training, Continuing Education and

Adult Education at Houston Community College-Northeast. [REDACTED] states that the course the applicant completed on August 6, 2005, is designed for adults whose primary language is other than English and that the focus is on the oral component of the naturalization test, based on the 100 questions and answer list. He states that related topics include U.S. history and government, the judicial system, and U.S. institutions and culture. He states that the course was taught from June 4, 2005, to August 6, 2005, and that at the time the letter was written, the applicant had completed five of the ten weeks of classes.

At the time of his second interview on June 22, 2005, the applicant had completed the 18 hour October 20, 2004, class and was enrolled in an additional 40 hour class. He had submitted proof of completion of the 18 hour class, but had not submitted proof of enrollment in the 40 hour class. The regulations require that he submit documentation to show that he has completed or is attending such classes at the time of filing the Form I-485, subsequent to filing the application, but prior to the interview, or at the time of the second interview. The applicant did not submit evidence of this additional 40 hour class until he filed the current appeal. Accordingly, the director's decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act will be affirmed.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.