U.S. Department of Homeland Security
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Washington, D.C. 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: PHOENIX, ARIZONA Date: AUG 04 2008

MSC 03 164 61661

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 forwarded to the Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and 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, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal.[1] This matter 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 asserted that the applicant qualifies for an exception to the basic citizenship skills requirement and that he is otherwise qualified to adjust to lawful permanent resident status under the LIFE Act.

The regulations at 8 C.F.R. § 245a.20(a)(2) state, in pertinent part:

> *Denials.* The alien shall be notified in writing of the decision of denial and of the reason(s) therefor. When an adverse decision is proposed, [Citizenship and Immigration Services, (CIS)] shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted a period of 30 days from the date of the notice in which to respond to the notice of intent to deny. All relevant material will be considered in making a final decision. If inconsistencies are found between information submitted with the adjustment application and information previously furnished by the alien to [CIS], the alien shall be afforded the opportunity to explain discrepancies or rebut any adverse information.

A review of both the electronic and administrative record reveals that a notice of intent to deny was never issued to either counsel or the applicant. Accordingly, the decision of the district director is withdrawn. The case will be remanded for the purpose of the issuance of a notice of intent to deny, which specifies why the director intends to deny the application and provides the applicant with an opportunity to respond, as well as for the purpose of issuing a new decision to both counsel and the applicant. The new decision, if adverse to the applicant, shall be certified to this office for review.

The AAO notes that, *if* the director finds the applicant ineligible for permanent resident status under section 1104 of the LIFE Act, the director shall consider the applicant's eligibility for adjustment of status to that of a temporary resident pursuant to the regulation at 8 C.F.R. § 245a.6, which provides, in pertinent part:

> **If the district director finds that an eligible alien as defined at** § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director *shall* consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A).

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[1] The record indicates that the appeal was timely filed with the appropriate fee and that the Phoenix District Office properly received the appeal. Counsel submitted an appeal brief within 30 days of filing the Form I-290B, as he indicated on the Form I-290B that he would do. Yet, counsel incorrectly indicated on appeal that the Phoenix District office rejected the Form I-290B in this matter for having been submitted without the appropriate fee. Counsel also submitted a copy of a reject notice which related to a case having receipt number MSC 07 262 21832. In addition, counsel submitted evidence that his office provided the proper fee with the Form I-290B in this matter. It appears that counsel determined in error that the reject notice he submitted, which relates to a different filing made by his office, relates to the instant case.

(Emphasis added).

This office notes that when applying for temporary resident status under the *Immigration Reform and Control Act of 1986* (IRCA), the applicant was 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).[2]

ORDER: This matter is remanded for further action and consideration pursuant to the discussion above.

[2] The director shall not interpret this discussion of 8 C.F.R. § 245a.6 as a finding by the AAO that, for example, the report submitted by the applicant's clinical psychologist is not sufficient to support the applicant's claim that he is eligible for a medical exception to the basic citizenship requirement of the LIFE Act. This office makes no finding on that issue in this remand. The AAO only makes a point of noting here the director's obligation to consider the application under IRCA, if he should find the applicant ineligible under the LIFE Act, because the record suggests that the director did not take this into consideration during his initial analysis of the case.