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U.S. Citizenship
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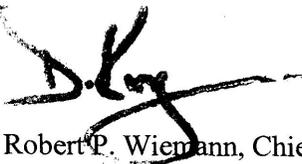
IN RE: Applicant:

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. Wienmann, 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, 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 has met the requirements for citizenship skills found in 8 C.F.R. § 245a.17(a). Counsel submits evidence of the applicant’s participation in a qualified course.

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 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 January 31, 2003, and again on November 20, 2003. On both occasions, the applicant failed to demonstrate a minimal understanding of ordinary English and knowledge of civics and history of the United States. 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).

On appeal, counsel contends that the applicant was not informed that the classes needed to include instruction in U. S. history and government. Counsel asserts that the applicant has since enrolled in such a course at Mountain View College, and is again enrolled for a new term beginning on October 10, 2005.

Counsel submits a September 26, 2005, letter by [REDACTED], ESOL advisor of Mountain View College. [REDACTED] indicated that the applicant is registered for English Literacy (ESL) and Civics

classes (Citizenship) through the Continuing Education Program of Mountain View College. Mr. [REDACTED] stated that the program is a state recognized, accredited (SACS) learning institution in the United States, and that the program verifies attendance through formal attendance procedures. He further stated that the applicant enrolled in ESL classes starting on October 10, 2005. The applicant has taken and completed a civics class. Both classes totaled 60 hours, and are offered year-round and equivalent to one year of study.

The record includes a June 1, 2005, registration summary and official cash receipt in the applicant's name. The registration summary indicates that the applicant enrolled in and paid for a Citizenship Basics course scheduled to begin on June 18, 2005.

The record includes a June 2, 2005, letter by [REDACTED] Director of Adult Basic Education at Dallas Independent School District. [REDACTED] stated that the program is accredited and state-recognized. He also stated that the applicant enrolled in July 2003 and completed 140 hours of ESL instruction from July 2003 through June 2004. He listed the number of hours completed by the applicant for every month from July 2003 through June 2004. The record also includes three certificates of achievement, which confirm the applicant's completion of the above ESL instruction, dated May 28, 2003, June 28, 2003, and June 26, 2004.

The record includes a June 3, 2005, letter by [REDACTED], principal of Erasmo Seguin Elementary school. She stated that the applicant attended ELS classes during the 2002-2003 school year.

The above evidence demonstrates that the applicant has completed at least 200 hours of instruction in English and United States history and government. The evidence also indicates that the applicant attended a state-recognized, accredited school, where the course of study was period of one academic year (or the equivalent thereof according to the standards of the learning institution). The applicant has met the basic citizenship skills requirements under the regulation at 8 C.F.R. § 245a.17(a)(3).

However, the applicant must also meet the requirements under 8 C.F.R. § 245a.17(a)(3). The applicant must have submitted the evidence before or at his second interview. This requirement is a mandatory time frame and clearly stated in the regulations. The record does not reflect that evidence of the applicant completing 40 hours of instruction in both English and U.S. history and government was submitted before or at the applicant's second interview on November 20, 2003.

It is noted that two of the three certificates of achievement may have been submitted prior to or at the applicant's second interview. However, the certificates indicate completion of solely English courses, not both English and U.S. history and government instruction as required under 8 C.F.R. § 245a.17(a)(3).

Beyond the decision of the director, the record indicates that on August 17, 2002, the applicant was charged with *driving while intoxicated*, in violation of section 49.04 of the Texas Penal Code in the

Country Criminal Court #5 of Dallas County, Texas (Cause No. [REDACTED]). On February 28, 2003, the applicant pled guilty/nolo contendere and was convicted of *driving while intoxicated*, a misdemeanor conviction. The applicant was sentenced to 170 days confinement in the Dallas County Jail, a fine of \$750.00, and 22 months of community supervision. This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

Based on the above discussion, 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 affirms 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.