

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

[Redacted]

FILE: [Redacted]
MSC 02 015 61789

Office: OKLAHOMA CITY

Date: FEB 11 2006

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. All documents have been returned to the office that originally decided your case. 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, Oklahoma City, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The director denied the application because the applicant had failed to establish that she satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act. Specifically, the director noted in the denial that the applicant had failed both the English language and U.S. government and history portions of the basic citizenship skills test during her second interview on July 16, 2004.

On appeal, counsel for the applicant contends that the applicant has met the regulatory requirements by demonstrating compliance under an alternative method and thus qualifies for the benefit sought. Specifically, counsel claims that the applicant has satisfied the basic citizenship skills by pursuing a qualifying course of study while attending a state recognized, accredited learning institution in the United States in 2003, as set forth in 8 C.F.R. § 245a.17(3). Counsel submits documentation in support of this contention, and requests reconsideration based on this newly-submitted evidence.

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 was 46 years old at the time she took the basic citizenship skills test and provided no evidence to establish that she was developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Further, the applicant does not satisfy the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because she 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).

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 afforded two interviews in connection with her LIFE Act application, on July 2, 2003 and again on July 16, 2004. On both occasions, the applicant was unable to demonstrate an understanding of ordinary English. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

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, if he or she meets one of the criteria defined in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). In part, an applicant must establish that he or she meets the following under 8 C.F.R. § 245a.17:

- (2) He or she has a high school diploma or general education development diploma (GED) from a school in the United States; 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.

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) therefore. When an adverse decision is proposed, 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.

A thorough review of the applicant's file confirms that a notice of intent to deny was not issued to the applicant prior to the denial of the application which advised the applicant of the grounds for the denial and the alternative methods for compliance with the basic citizenship skills requirement. Accordingly, the decision of the director is withdrawn. The case will be remanded for the purpose of the issuance of a new notice of intent to deny as well as a new final decision to both the applicant and counsel. The director should review the applicant's claim that she was enrolled in a qualifying course of study at a state recognized, accredited learning institution in 2003 to determine whether it complies with the above-referenced criteria and satisfies the basic citizenship skills requirement. The director should review the evidence in the record, and consider the time at which it was

submitted to determine if such documentation supporting the applicant's claim was in fact submitted prior to or during the second interview. The new decision, if adverse to the applicant, shall be certified to this office for review.

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