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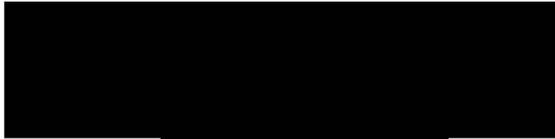
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 354 61232

Office: PHOENIX

Date: JUN 16 2008

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. 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.

A handwritten signature in black ink, appearing to read "D. King".

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, 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, the applicant contends that it is unfair to require an applicant to submit evidence that he is pursuing a course of study in English that requires 40 hours of instruction. The applicant further contends that it is unrealistic to expect someone of his age, limited education and economic circumstances to enroll in college or graduate high school or even obtain a GED.

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding 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 [Secretary of Homeland Security]) 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 Secretary of Homeland Security may waive all or part of the above requirements for applicants who are at least 65 years of age or who are developmentally disabled. *See* 8 C.F.R. § 245a.17(c).

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 may establish that he or she has met the requirements of section 312(a) of the Immigration and Nationality Act (Act) by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 – 312.3.

An applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. 8 C.F.R. § 245a.17(a)(2). The high school or GED diploma may be submitted either at the time of filing the Form I-485 LIFE Act application, subsequent to filing the application but prior to the interview, or at the time of the interview. *Id.*

Finally, an applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by establishing that:

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 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 (the applicant's name and A-number must appear on any such evidence submitted).

8 C.F.R. § 245a.17(a)(3).

An 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 six months (or earlier at the request of the applicant) to pass the required tests or to submit the evidence described above. 8 C.F.R. § 245a.17(b).

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE Act application, on February 25, 2003, and again on September 3, 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 fact on appeal. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 245a.3(b)(4)(iii)(A)(2). 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). The applicant did not provide evidence of having attended or attending a state recognized, accredited learning institution in the United States with the permitted coursework pursuant to the regulation at 8 C.F.R. § 245a.17(a)(3).

In the Notice of Decision, dated October 19, 2006, the director denied the instant application based on the applicant's failure to satisfy the basic citizenship skills requirement. On appeal, the applicant contends that it is unfair to require an applicant to submit evidence that he is pursuing a course of study in English that requires 40 hours of instruction. The applicant further contends that it is unrealistic to expect someone of his age, limited education and economic circumstances to enroll in college or graduate high school or even obtain a GED.

The AAO notes that the ability to satisfy the basic citizenship skills requirement is required from all applicants and includes several exceptions to the requirement (as noted previously), none of which pertain to the applicant. There are also alternatives to the basic citizenship skills requirement. Based on the evidence in the record, 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.

Beyond the decision of the director, the record reflects that on September 20, 1998, the applicant was arrested and charged with *aggravated driving under the influence of intoxicating liquor or drugs with a person under the age of 15 in the vehicle*, in violation of the Arizona Revised Statute 28-1383, in the Superior Court of the State of Arizona, County of Maricopa. On January 19, 1999, the applicant was convicted of *aggravated driving under the influence of intoxicating liquor or drugs with a person under the age of 15 in the vehicle*, a misdemeanor. The applicant was sentenced to 3 years probation, a fine of \$400.00 and a \$40 per month probation fee. The offence was designated a misdemeanor. (Case No. CR98-14169). This single misdemeanor conviction does not render the applicant ineligible for adjustment under the LIFE Act.

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