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**U.S. Citizenship
and Immigration
Services**

L2.

[Redacted]

FILE: [Redacted]
MSC 02 243 61753

Office: SALT LAKE CITY

Date: **MAR 27 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. 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, Salt Lake City, and is now before the Administrative Appeals Office (AAO) on appeal. The 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 had submitted evidence with the appeal to demonstrate that he was enrolled in an accredited program following the requisite course of study consisting of classes in English and the history and government of the United States, and as such he is exempt from the English and U.S. history and government examinations administered by Citizenship and Immigration Services (CIS). In the alternative, counsel requested that CIS allow the applicant another opportunity to be tested in English and U.S. history and government.

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 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 above requirements for aliens who are at least 65 years of age or who are developmentally disabled. *See also* 8 C.F.R. § 245a.17(c).

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. *See* 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 and 312.2.

An applicant may also establish that he or she has met the requirements of section 312(a) of the Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2).

Finally, an applicant may establish that he or she has met the requirements of section 312(a) of the Act by providing evidence that he or she has attended or is attending a state recognized, accredited learning institution in the United States, following a course of study which spans one academic year and that includes 40 hours of instruction in English and United States history and government. The applicant may provide documentation of such on the letterhead stationery of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3).

The 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 6 months: to pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit evidence that he or she has attended or is attending a state-recognized, accredited learning institution in the United States, following a course of study which spans an academic year and that includes 40 hours of instruction in English and United States history and government. *See* 8 C.F.R. § 245a.17(b).

On May 31, 2002, the applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On June 9, 2004, the applicant was interviewed in connection with his LIFE Act application. He failed to demonstrate a minimal understanding of ordinary English during the examination portion of the interview. He also failed the U.S. history and civics test administered by CIS.

On January 26, 2005, at the second LIFE interview, the applicant again failed to demonstrate a minimal understanding of ordinary English.

On December 30, 2005, the director denied the application based on the reasons set out in the NOID.

On appeal, counsel indicated that on October 19, 2005, the applicant began work in a requisite course of study, including English and U.S. history and government instruction, and as such is exempt from the English and U.S. history examinations which CIS officers administer to LIFE legalization applicants. In the alternative, counsel requested that the applicant be allowed an additional interview and an additional opportunity to pass an examination in English and U.S. history and government.

The regulations provide that the 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 6 months: to pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit evidence that he or she has attended or is attending a state-recognized, accredited learning institution in the United States, following a course of study which spans an academic year and that includes 40 hours of instruction in English and United States history and government. *See* 8 C.F.R. § 245a.17(b).

The record establishes that the applicant did not pass the basic citizenship skills examination on June 9, 2004 and on January 26, 2005. The regulations do not provide for a third interview, contrary to the suggestions of counsel made on appeal.

Further, the regulations specify that to fulfill the LIFE Act requirements relating to a minimal understanding of English and an understanding of U.S. history and government by attending certain state-accredited programs, the applicant must enroll in the program and provide documentation of having done so to CIS prior to or during the second LIFE interview. *See* 8 C.F.R. § 245a.17(b). The record establishes that the applicant failed to enroll in a course of study that met the regulatory requirements described at 8 C.F.R. § 245a.17(a)(3) prior to the January 26, 2005 second LIFE legalization interview, nor did he provide evidence of such prior to or during that interview.

The AAO notes that even if the documentary evidence in the record, which attempts to establish that the applicant had enrolled in the appropriate accredited program, would have been provided before or during the second LIFE interview, this evidence is not sufficient. To meet the regulatory requirements, such evidence must state that the

applicant has attended or is attending a state recognized, accredited learning institution in the United States, following a course of study which spans one academic year and that includes 40 hours of instruction in English and United States history and government. The applicant may provide documentation of such on the letterhead stationery of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3). The evidence which the applicant submitted on appeal does not meet these requirements. For example, it is not on letterhead stationery, it gives no indication that the course of study followed by the applicant includes instruction in U.S. history and government and it does not state that the applicant is in a course of study that which spans one academic year.

The regulations also state that to fulfill the LIFE Act requirements relating to basic citizenship skills an applicant may provide his or her high school diploma or GED from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2). The applicant has not provided a high school diploma or GED from a school in the United States.

The applicant is not 65 years old or older and is not developmentally disabled. Thus, he does not qualify for either of the exceptions listed in section 1104(c)(2)(E)(ii) of the LIFE Act.

The applicant has failed to demonstrate that he has met the basic citizenship skills requirement as described at 1104(c)(2)(E) of the LIFE Act. Thus, he is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act.

The AAO would emphasize, however, that where the director finds the applicant ineligible for permanent resident status under section 1104 of the LIFE Act, the director must then 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).

(Emphasis added).

This office would note that when applying for temporary resident status under the *Immigration Reform and Control Act of 1986*, 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).

ORDER: The director's decision denying the LIFE Act application is affirmed. The application is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the applicant, is to be certified to the AAO for review.