



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC 02 232 63567

Office: HOUSTON, TX

Date: MAY 14 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, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The district director determined that the applicant was not able to pass examinations meant to establish that she had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act. Thus, the director denied the application.

On appeal, the applicant's representative indicated that the applicant had submitted evidence to demonstrate that she 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 she is exempt from the English and U.S. history and government examinations administered by Citizenship and Immigration Services (CIS). She also submitted a letter from the McAllen Independent School District/Lorenzo De Zavala Elementary School to confirm the applicant's enrollment in such a program.

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 on the date of filing 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 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).

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 20, 2002, the applicant filed the Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On November 21, 2002 and April 1, 2004 the applicant appeared for her LIFE legalization interviews. The record indicates that the applicant was unable to comprehend basic English and as such could not be tested in English and U.S. history and government at either interview.

On May 13, 2004, the director issued a Notice of Intent to Deny (NOID) in which he indicated that he intended to deny the application because the applicant had failed to demonstrate a basic understanding of English and U.S. history and government. *See* section 1104(c)(2)(E)(i) of the LIFE Act. The director also indicated that the applicant had failed to establish by a preponderance of the evidence that she resided in the United States in continuous, unlawful status from a date prior to January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On December 3, 2004, the director denied the application because the applicant failed to meet the basic citizenship requirements as defined at section 1104(c)(2)(E)(i) of the LIFE Act. It is not clear whether the director determined that the applicant had provided sufficient evidence in response to the NOID to establish continuous residence in an unlawful status and continuous physical presence in the United States during the statutory periods.

On appeal, the applicant's representative indicated that prior to the April 1, 2004 LIFE legalization interview, 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.

Also submitted into the record is a letter from [REDACTED], which is not dated, written on McAllen Independent School District/Lorenzo De Zavala Elementary School letterhead stationery.¹ The letter confirms that the applicant began attending the McAllen Independent School District Pre-Literacy English as a Second Language Classes during the 2003 through 2004 school year. On January 25, 2005, she re-enrolled in this program for the second semester of the 2004 through 2005 school year.

The record does not indicate that the applicant presented any proof of her enrollment in these classes during her second LIFE legalization interview on April 1, 2004. Even if she had presented a comparable letter at that time, it would not have been sufficient on its own to establish that she had attended or was 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. That is, the letter states only that in 2003 the applicant had begun attending English as a Second Language classes, which meet four hours a week for an entire academic year. It does not indicate whether U.S. history and government coursework was part of the curriculum in this program. *See* 8 C.F.R. § 245a.17(b). This letter does include a request that the school be contacted if additional information was needed regarding the applicant and her studies. Thus, if the CIS officer at the LIFE legalization interview had been presented with such a letter, he or she could have contacted a school administrator for information as to whether the applicant's coursework met the regulatory requirements. However, the officer would not have been under an obligation to do so.

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 applicant failed to properly document that she had enrolled in a course of study that met the regulatory requirements described at 8 C.F.R. § 245a.17(a)(3) prior to or during the April 1, 2004 LIFE legalization interview.

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 was not 65 years old or older at the time of filing and is not developmentally disabled. Thus, she 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 she has met the basic citizenship skills requirement as described at 1104(c)(2)(E) of the LIFE Act. Thus, she 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:

¹ does not indicate whether she is a teacher or an administrator at this school.

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.