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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 02 229 61590

Office: DALLAS

Date: **MAY 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:



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.

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 (director) in Dallas, Texas. An appeal was rejected by the Administrative Appeals Office (AAO) as untimely filed. Upon review of the record, the AAO determines that the appeal was timely filed. The AAO will withdraw its prior decision, therefore, and adjudicate the appeal on the merits. The appeal will be dismissed.

The director denied the application because the applicant 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 was enrolled in English language and U.S. civics classes that fulfilled the “basic citizenship skills” requirement for LIFE legalization.

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 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 – 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. *See* 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 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. *See* 8 C.F.R. § 245a.17(b).

On May 17, 2002 the applicant, a native of Mexico, filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On March 7, 2003 the applicant was interviewed for LIFE legalization. He failed to demonstrate a basic understanding of ordinary English and a basic knowledge of U.S. history and government during the examination portion of the interview.

At his second interview for LIFE legalization, on March 16, 2004, the applicant again failed the examination of his basic English literacy and knowledge of U.S. history and government.

On March 17, 2004 the director issued a Notice of Intent to Deny (NOID), citing the two failed examinations. The applicant was given 30 days to submit evidence to overcome the grounds for denial.

In a response to the NOID, dated April 14, 2004, counsel asserted that the applicant had enrolled in English as a Second Language (ESL) classes at two different learning institutions, as well as a literacy civics/citizenship class at a third institution. As evidence thereof counsel submitted photocopies of the following documentation:

- A letter from [REDACTED], self-identified as a teacher, dated March 30, 2004, stating that the applicant began attending Adult ESL classes on March 2, 2004 at

Ascher Silberstein Elementary School on Mondays and Wednesdays from 6:00 p.m. to 8:00 p.m. and had not missed a class.

- A certificate awarded to the applicant on March 30, 2004 by Eastfield College of the Dallas County Community College District (DCCCD) for the successful completion of a continuing education course entitled “ESL: Getting Started A.” The applicant received 3 Continuing Education Units (CEUs) for the course.
- An “ESL Class (level) Transition Slip” made out to the applicant by his instructor, [REDACTED], dated March 30, 2004, noting the applicant’s successful completion of “Getting Started A” and recommending that he be transitioned into Level B.
- A letter from [REDACTED], Adult Education Program Director of the Dallas Independent School District (DISD), dated April 13, 2004, stating that the applicant had twice attended the “Literacy Civics/Citizenship” class at the North Oak Cliff Library, which was sponsored by the Dallas Public Schools Adult Education Program, “a state recognized, accredited learning institution in the United States.” As indicated by [REDACTED] students are officially enrolled in the course – whose curriculum includes at least 40 hours of instruction in English and United States history and government – after 12 hours of instruction and a baseline assessment score. According to [REDACTED] the applicant had completed 6 hours of instruction.

On June 16, 2004, the director denied the application on the ground that the evidence of record failed to show that the applicant had satisfied the basic citizenship skills requirement for LIFE legalization.

The applicant filed an appeal, which the AAO rejected on August 2, 2006, on the ground that it was not filed within the 33-day appeal period prescribed in the regulations. Upon review of the record, including a submission by counsel in September 2006, the AAO determines that the appeal was in fact timely filed.¹ Accordingly, the AAO’s decision of August 2, 2006 is withdrawn. The appeal will be considered and adjudicated on the merits.

Counsel asserts on appeal that the applicant, before his second interview on March 16, 2004, enrolled in two ESL courses – (1) “ESL: Getting Started A” at Eastfield College, beginning on February 3, 2004, and (2) “Adult ESL” at Ascher Silberstein Elementary School, beginning on March 2, 2004 – and that he completed both classes. Supplementing the documentation previously submitted in response to the NOID, counsel submits a photocopy of the applicant’s “Registration Summary” from the DCCCD, dated January 20, 2004, confirming that the applicant had registered for the “ESL: Getting Started A” course beginning on February 3, 2004, and had paid the \$60.00

¹ While the fee receipt stamp on the notice of appeal (Form I-290B) is dated July 20, 2004, which was 34 days after the decision was issued by the Los Angeles District Office, the notice of appeal also bears a date stamp of July 19, 2004, which was 33 days after the decision was issued.

tuition fee. Counsel also reiterates that the applicant was “enrolled” in a Literacy Civics/Citizenship class offered by the DISD, citing the letter of April 13, 2004 submitted in response to the NOID.

Counsel acknowledges that the applicant failed the civics requirement at both of his interviews, as well as the English language requirement at his first interview, but indicates that the applicant was not advised that he failed the English requirement at his second interview.² According to counsel, the applicant’s “enrollment” in the DISD’s Literacy Civics/Citizenship class – which covered English language instruction as well as U.S. history and government – within 30 days of the date the NOID was issued satisfied not only his U.S. government and history requirement, but also his English language requirement for LIFE legalization, in accordance with 8 C.F.R. § 245a.17(a)(3). In counsel’s view, therefore, the applicant has satisfied the basic citizenship skills requirement for legal permanent resident status under the LIFE Act.

The AAO does not agree with counsel’s contention that attending Literacy Civics/Citizenship classes sponsored by the DISD satisfied the applicant’s basic citizenship skills requirement under 8 C.F.R. § 245a.17(a)(3). The letter from the Adult Education Program Director, dated April 13, 2004, does not indicate that the applicant was attending a course of study for one academic year with a curriculum including 40 hours or more of instruction in English and U.S. government and history, as prescribed in the regulation. The letter states only that the applicant “has attended the Literacy Civics/Citizenship class . . . twice.” It does not state that the applicant was enrolled in a course lasting one academic year, encompassing 40 hours of instruction. In fact, the letter states that “[s]tudents are officially enrolled after 12 hours of instruction and with a baseline assessment score.” (Emphasis added.) The letter states that the applicant had completed six hours of instruction, which would indicate that he was not yet officially enrolled in the full year, 40-hour course of study. No further documentation has been submitted to show that the applicant completed 12 hours of instruction and became “officially enrolled” in the 40-hour course of study. Furthermore, the applicant evidently did not begin attending the Literacy Civics/Citizenship classes until after his second interview for LIFE legalization, at which he failed the basic citizenship skills test for the second time. Since the certification of his class attendance (in the letter of April 13, 2004) was not submitted at the time of, or before, the second interview on March 16, 2004, it did not meet the deadline prescribed in the regulation. Finally, the applicant’s A-number does not appear on the DISD letter.

As for the applicant’s ESL courses at Ascher Silberstein Elementary School and at Eastfield College, DCCCD, they also failed to meet the basic citizenship skills requirement under 8 C.F.R. § 245a.17(a)(3). The letter from [REDACTED], dated March 30, 2004, does not conform to the regulatory requirements because it is not on letterhead stationery, was not submitted at or before the

Counsel is correct insofar as the NOID stated only that the applicant “failed to demonstrate knowledge of the government and history of the United States” at his second interview. The test itself is in the record, however, and clearly shows that the applicant failed both the English literacy and the civics portions of his second basic citizenship skills test, administered in March 2004.

applicant's second interview, does not state that the elementary school or the adult education program is a state recognized, accredited learning institution, and does not indicate that the applicant was enrolled in a course of study for one academic year with a curriculum including at least 40 hours of instruction in English and U.S. history and government. Nor does the documentation from Eastfield College/DCCCD, dated January 20 and March 30, 2004, comport with the requirements of 8 C.F.R. § 245a.17(a)(3) because it was not submitted at or before the applicant's second interview, does not state that the school is a state recognized, accredited learning institution, and does not indicate that the applicant was enrolled in a course of study for one academic year with a curriculum including at least 40 hours of instruction in English and U.S. history and government. The only pertinent information conveyed by the Eastfield College/DCCCD documentation is that the applicant completed a single ESL course, for which he received three CEUs.

Thus, the applicant has not satisfied the basic citizenship skills for LIFE legalization under any of the three options set forth in the regulations. He did not pass either of his examinations of basic English language ability and knowledge of U.S. history and government, as required under 8 C.F.R. § 245a.17(a)(1). He did not provide a high school diploma or GED from a school in the United States, as required under 8 C.F.R. § 245a.17(a)(2). Nor did the applicant show at the time of his second interview, on March 16, 2004, that he had attended, or was 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, as required under 8 C.F.R. § 245a.17(a)(3).

The applicant is not 65 years old or older and there is no evidence in the record that he is developmentally disabled. Thus, the applicant 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. Accordingly, he is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed, and the application denied.

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