

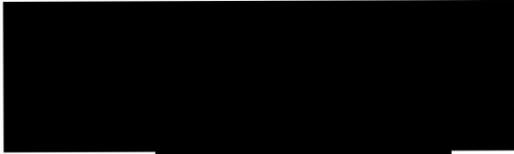
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FILE:



MSC 02 109 62002

Office: DENVER

Date SEP 03 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: SELF-REPRESENTED

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 cursive script, appearing to read "R. Wiemann".

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 San Francisco, California. It is now on appeal before the Administrative Appeals Office (AAO). 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 the applicant asserts that the interviewer failed to take into consideration his hearing problem and denied him the use of an interpreter who would have helped him hear and understand the interviewing officer’s questions. The applicant submitted additional documentation with the appeal.

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).

The applicant, a native of Mexico who claims to have resided in the United States since 1981, filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act (Form I-485) on January 17, 2002.

On January 15, 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 June 21, 2006, the applicant failed to demonstrate a basic understanding of ordinary English language and a basic knowledge of United States history and government for the second and final time.

On the same day, the director issued a decision denying the application on the grounds that the applicant failed to demonstrate sufficient knowledge and understanding of the United States history and civics and failed to demonstrate sufficient knowledge and understanding of the English language. The director determined that the applicant is ineligible to adjust status under the LIFE Act.

On appeal the applicant asserts that the interviewing officer failed to accommodate his hearing problem which caused him to fail the tests. The applicant submits a letter from [REDACTED] of the Alameda County Medical Center, Audiology Department, in support of his claim.

It is undisputed that the applicant has not satisfied the basic citizenship skills for LIFE legalization as set forth in the regulations. On two separate occasions he failed to pass examinations of his 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 June 21, 2006, 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. Thus, the applicant does not qualify for an exception under this provision.

The issue to be addressed in this case is whether the applicant has established that he qualifies for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable physical or mental impairment.

The regulation at 8 C.F.R. § 312.1(b)(3) states, in pertinent part:

The [basic citizenship skills requirement] shall not apply to any person who is unable, because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language For purposes of this paragraph, the term *medically determinable* means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency as outlined in paragraph (c) of this section.

The regulation at 8 C.F.R. § 312.2(b) states, in pertinent part:

The [basic citizenship skills requirement] shall not apply to any person who is unable to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States because of a medically determinable physical or mental impairment, that already has or is expected to last at least 12 months For the purposes of this paragraph, the term *medically determinable* means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual to be unable to demonstrate the

knowledge required by this section or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications.

The applicant has not established that he has a medically determinable impairment as defined in the pertinent regulations. The applicant submitted a letter from [REDACTED] MS, CCC-A, dated June 26, 2006, which states that the applicant has a history of bilateral sensorineural hearing loss and dizziness, uses hearing aids in both ears, and can hear better with the right than with the left ear. Without the hearing aids the applicant cannot understand most conversation, Ms. [REDACTED] states, but with hearing aids the applicant can understand conversation directed at him, at a close distance and in quiet surroundings. Ms. [REDACTED] suggests that when speaking with the applicant, it is better to face him, stay at a close distance, and speak in a clear natural manner, not too fast.

The record contains a Form I-693 Medical Examination, signed by [REDACTED], M.D. on May 27, 2006, which indicates that the examining physician found "no apparent defect, disease or disability." The list of possible defect, diseases or disability conditions printed on the form includes "other physical defect, disease or disability" which requires the examining physical to specify the type of physical defect. [REDACTED] did not indicate that the applicant has any type of physical defect, disease, or disability.

The observations of [REDACTED] and [REDACTED], cast doubt on the applicant's claim that his hearing impairment prevented him from demonstrating his understanding of United States history and government and an understanding of basic English language. The applicant has not established that he is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable physical or mental impairment.

In addition, contrary to the applicant's assertion that the interviewing officer ignored his hearing problem, the interviewing officer in a memo to the file dated August 4, 2006, stated "I was aware of his hearing problems, and made adjustments for it. I spoke slowly and in a loud voice, so much so that officers in adjacent offices could hear me." The officer further noted that the applicant's problem is "more of a linguistic nature than an auditory one," because the applicant understood him when he placed him under oath using Spanish.

The AAO finds that the exclusion of an interpreter at the applicant's second interview was proper because the purpose of the interview was for the applicant to demonstrate his understanding of simple English and the knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States which, required an understanding of English.

For the reasons stated above, it cannot be concluded that the applicant suffers from a physical or mental disability or impairment that would allow him to be considered developmentally disabled so as to qualify for the exceptions contained at 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b). As the

applicant has failed to establish that he is developmentally disabled, he is not eligible for a discretionary waiver under 8 C. F. R. § 245a.1(v).

Based on the foregoing analysis of the evidence, 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.

For the reasons discussed above, the appeal will be dismissed, and the application denied.

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