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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:

MSC 02 134 63061

Office: GARDEN CITY

Date: **FEB 11 2009**

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.

*John F. Vaughan*  
for John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director in Garden City, New York. 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 counsel submits a letter from [REDACTED], who had previously written a medical excuse letter for the applicant, listing his medical license number in the State of New York. Counsel requests that the applicant be given another opportunity to test his basic citizenship skills.

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 Bangladesh who claims to have resided in the United States since November 1980, filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act (Form I-485) on February 11, 2002.

On April 19, 2005, 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.

In a Notice of Intent to Deny (NOID), issued on the same date, the director notified the applicant that he had failed the basic citizenship skills requirements for LIFE legalization. The director granted the applicant six months to prepare for a second and final re-examination and notified him that failure to pass the basic citizenship skills test during the re-examination would result in the denial of his application based solely on this issue. The re-examination was scheduled for October 21, 2005.

On October 18, 2005, the applicant submitted a "To Whom it May Concern" letter from Dr. [REDACTED] of Coney Island Hospital in Brooklyn, New York, stating that the applicant was under his care for chest pain/dyspnoia, insomnia and anxiety, and that the applicant needed specialist care. [REDACTED] recommended that the applicant "should be excused from October 18, 2005 through October 22, 2005, for the same medical reason." On October 20, 2005, the director notified the applicant on a Form G-56 that his re-examination was rescheduled for

October 28, 2005. On November 1, 2005, the director issued yet another Form G-56, notifying the applicant that his re-examination was rescheduled again for November 18, 2005.

On the date of the re-examination and interview, the applicant did not appear as scheduled. Counsel returned a copy of the Form G-56 with a notation that the applicant was unable to keep his appointment: "Alien is still sick. Medical is attached. Kindly reschedule." Counsel attached a letter from [REDACTED] of the Brooklyn Hospital Center, in Brooklyn, New York, dated November 16, 2005. [REDACTED] stated that the applicant "is complaining of severe headache and uncontrolled hypertension today." He further stated that the applicant "will be unable to attend his immigration interview tomorrow due to his medical condition."

The regulation at 8 C.F.R. § 312.5 (b) provides that an applicant who receives notice of the second scheduled examination date and fails to appear without good cause without prior notification to the service will be deemed to have failed the second examination.

On August 6, 2007, the director issued a Notice of Decision denying the application on the ground that the applicant failed to pass the basic citizenship skills test for the second and final time, and was therefore ineligible to adjust status under the LIFE Act. The director indicated that the applicant was afforded an opportunity for re-examination of his basic citizenship skills on November 18, 2005, but did not appear for the interview and failed to provide a valid reason for non-appearance. The director did not accept the letter from [REDACTED] as a valid reason for the applicant's failure to appear for the interview, in part because [REDACTED] did provide his license number showing that he is licensed to practice medicine in the State of New York. In addition, the letter was not submitted prior to the re-examination. While the applicant's re-examination was scheduled at 9:00 a.m. on November 18, 2005, the receipt stamp of the New York District Office shows that the letter from [REDACTED] was not received in that office until 12:39 p.m. on November 18, 2005.

On appeal counsel submits a letter from [REDACTED], dated August 20, 2007, with his New York State license number to prove that he is licensed to practice medicine in the State of New York. Counsel provides no further medical evidence about the applicant's physical condition on November 18, 2005, or evidence that [REDACTED]'s letter dated November 16, 2005 was delivered to the New York District Office prior to the applicant's scheduled re-examination at 9:00 a.m. on November 18. Counsel requests that the applicant be given another opportunity to test his basic citizenship skills.

The applicant has not satisfied the basic citizenship skills requirement for LIFE legalization under any of the options set forth in the regulations. The applicant did not appear for his second, or third, scheduled re-examination, and therefore has not demonstrated a basic understanding of the English language and a basic knowledge of U.S. history and government, in accordance with 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, in accordance with 8 C.F.R. § 245a.17(a)(2). Nor did the applicant show at the time of his second scheduled interview on October 21, 2005, or his third scheduled interview on November 18, 2005, 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, in accordance with 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.

Based on the foregoing analysis, the AAO concurs with the director's decision that the applicant has failed to demonstrate that he has met the basic citizenship skills requirement prescribed under section 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.

Beyond the decision of the director, the applicant has failed to establish that he meets the continuous residence requirement for legalization under the LIFE Act.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must also establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

As evidence of his continuous residence in the United States during the years 1980 through 1988, the applicant submitted a series of letters and affidavits which include the following:

- A notarized letter from [REDACTED] Improvements in Brooklyn, New York, dated July 6, 1992, stating that the applicant was employed as a "helper" in construction work from December 5, 1980 to August 26, 1984, and was paid in cash.
- An affidavit from [REDACTED], president of [REDACTED] in Brooklyn, New York, dated July 20, 1992, stating that the applicant was employed "as a daily worker" from September 1, 1984 to June 30, 1987, and was paid in cash.
- A notarized letter from [REDACTED] of [REDACTED] Corporation in Brooklyn, New York, dated July 22, 1992, stating that the applicant was employed "as a daily worker" from August 1987 to December 1989, and was paid in cash.
- Notarized letters from [REDACTED], and [REDACTED] dated July 6, 1992, and July 9, 1992, stating that the applicant resided with them at their residences in Brooklyn, New York, from November 20, 1980 to July 2, 1987, and from July 28, 1987 until "today" (1992), respectively.

- An affidavit from [REDACTED], dated July 13, 1992, stating that he had known the applicant resided in the United States from November 1980 to the present (1992), at addresses in Brooklyn, and that he and the applicant were friends.

The employment documents listed above, do not meet the regulatory requirements set forth at 8 C.F.R. § 245a.2(d)(3)(i), because they did not provide the applicant's address during the period(s) of employment, did not describe the applicant's duties in any detail, did not indicate whether or not the information was taken from official company records, and did not indicate whether such records were available for review. Nor were the documents supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during the periods stated. In addition, the documents contain nearly identical language and formats as if prepared by a single individual, despite the fact that they emanate from three different and distinct companies. For the reasons discussed above, the AAO determines that the employment documents have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the other letters and affidavit in the record – from individuals who claim to have resided with or otherwise known the applicant in the 1980s – all have minimalist or fill-in-the-blank formats with little personal input by the affiants. The authors provided remarkably few details about the applicant's life in the United States, such as where he worked, and the nature and extent of their interaction with him over the years. Nor are the letters and affidavit accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the letters and affidavit have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). On this ground as well, therefore, the applicant has failed to establish his eligibility for legalization under 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.