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U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: SAN FRANCISCO Date: MAR 03 2009

[redacted - consolidated herein]
MSC 02 225 62869

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 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. 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 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 counsel asserts that the applicant understood sufficient amount of English and had made enough effort that he should have passed the English language portion of the basic citizenship skills test. Counsel further asserts that the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement for Legalization under the LIFE Act.

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 May 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 May 13, 2002.

On November 6, 2003, the applicant was interviewed for LIFE legalization. He failed to demonstrate a basic understanding of ordinary English during the examination portion of the interview.

At his second interview for LIFE legalization, on January 19, 2005, the applicant failed to pass the English language test – in particular, the reading and writing portions – for the second and final time.

On March 23, 2005, the director issued a decision denying the application on the ground that the applicant failed to pass the basic citizenship skills test, and was therefore ineligible to adjust status under the LIFE Act.

On appeal counsel, while acknowledging that the applicant is not completely proficient in English, asserts that the applicant understood sufficient amount of English and had made enough effort that he should have passed the English language portion of the basic citizenship skills test. Counsel further asserts that the assessment of an applicant's English language is subjective and discretionary, that the director abused his discretion in that he held the applicant to a higher standard than is required by the regulation, and failed to take into consideration the applicant's continuing efforts to

study and improve his English. Counsel contends that the applicant demonstrated a greater understanding of the English language during his re-examination on January 19, 2005 than during his first examination on November 6, 2003, by answering many of the examiners questions correctly. Counsel requests that the application be granted or in the alternative the application be remanded to the district office for a new interview (the third) and further review.

Counsel, however, does not provide any documentation, such as a letter from an accredited learning institution in the United States showing that the applicant had attended, or is pursuing a course of study in the English language, in support of his assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant has not satisfied the basic citizenship skills for LIFE legalization under any of the three options set forth in the regulations. On two separate occasions he failed to pass examinations of his English language ability, 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 January 19, 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, 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.

Thus, 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.

Contrary to counsel's assertion that the applicant meets the continuous residence requirement for legalization under the LIFE Act, the AAO finds that documentation in the record casts serious doubts on the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must 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).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: "An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed."

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States." (Emphasis added.) The regulation further explains that "[b]rief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States." 8 C.F.R. § 245a.16(b).

The file contains a Form EOIR-42B (application for cancellation of removal and adjustment of status for certain nonpermanent residents) in which the applicant responded to question #17, stating that he had resided in the United States since March 1986, and in response to question #19, the applicant stated that he first arrived in the United States in March 1986. On the Form G-325A (Biographic Information) completed and signed under penalty of perjury which, he submitted with the Form EOIR-42B, the applicant provided his last address outside the United States for more than one year as [redacted], Jalisco, Mexico, from August 1959 (month and year of birth) to February 1986. The applicant provided his last employer abroad as [redacted], Jalisco, Mexico, from May 1974 to February 2, 1986. The information contained in the two forms discussed above, is contrary to the applicant's testimony at his LIFE legalization interview on November 6, 2003, that he first entered the United States in 1980, and contrary to other documentation in the record attesting to the applicant's residence in the United States since the early 1980s.

The evidence of record clearly contains contradictory information regarding the applicant's initial entry into the United States and his continuous residence in the country for the period required for legalization under the LIFE Act. This casts considerable doubt on whether the applicant's claim that he has been in the United States since May 1980 is true, and whether the documentation submitted by the applicant in support of his claimed continuous residence is genuine. The applicant has failed to submit any reliable independent, contemporaneous evidence to rebut the contradicting evidence in the record or to establish with certainty when he first entered the United States.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing

to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period for legalization under the LIFE Act.

Thus, 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, the applicant has failed to establish his eligibility for legalization under the LIFE Act.

Based on the analysis of the evidence of record and the myriad inconsistencies discussed above, the AAO finds that the applicant is ineligible for 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.