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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

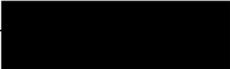
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DATE: **MAY 25 2012**

OFFICE: HOUSTON, TX

FILE: 

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).

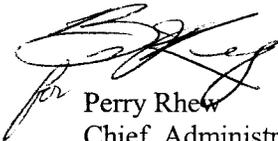
ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: : The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had failed to demonstrate his understanding of U.S. history and English as required under section 1104(c)(2)(E) of the LIFE Act. The record reflects the director notified the applicant in a [REDACTED] Notice of Intent to Deny (NOID) that he twice appeared for interviews, on [REDACTED] and, on [REDACTED]. However, at both interviews the applicant failed to demonstrate his understanding of English.

On appeal, counsel for the applicant asserts that the applicant has completed a course of study at a learning institution, and therefore, he satisfies the citizenship skills requirements for LIFE Act applicants. Counsel submits two certificates of completion from the Houston Community College.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("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 requirements for aliens who are at least 65 years of age or developmentally disabled. See 8 C.F.R. § 245a.17(c).

The applicant, was neither 65 years old nor developmentally disabled on October 26, 2001, the date of filing, therefore he does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does he satisfy the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act by "[s]peaking and understanding English during the course of the interview for permanent resident status" and answering questions based on the subject matter of approved citizenship training materials, or [b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS)." 8 C.F.R. §§ 245a.3(b)(4)(iii)(A)(1) and (2).

In the alternative, an applicant can satisfy the basic citizenship skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act. The "citizenship skills" requirement

of the section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States 8 C.F.R. § 245a.17(a)(2), or

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 8 C.F.R. § 245a.17(a)(3).

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must submit evidence to show compliance with the basic citizenship skills requirement “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 regulation at 8 C.F.R. § 245a.17(b) states that:

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) and (a)(3) of this section [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)]. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed on two occasions in connection with his LIFE Act application, on [REDACTED] and, again on [REDACTED]. However, at both interviews the applicant failed to demonstrate his understanding of English. The applicant does not dispute this on appeal. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). The applicant does not have a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(a)(2).

As noted above, on appeal, counsel submitted a certificate of completion from the Houston Community College System. The Certificates of Completion, awarded on May 18, 2003, signed by [REDACTED] Houston Community College indicates: satisfactory completion of ESL I – Listening & Speaking, Contact Hours 4.0 CEUs. However, there is no evidence that this course offered by the Houston Community College satisfies the “basic citizenship skills” requirement. The record also includes course descriptions for Special Topics in Reading, Literacy and Communications Skills, Communications Improvement I, Communications Improvement II, and

Communications Improvement III. However, the record does not include evidence to establish that the applicant has completed any of these courses.

Contrary to counsel's assertion, the applicant has not provided evidence that he has attended or is attending a course of study at an institution for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) as required under the provisions of 8 C.F.R. § 245a.17(a)(3). Also, the record does not indicate evidence of enrollment in a course that satisfies the requirements under 8 C.F.R. § 245a.17(a).

Therefore, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the AAO will not disturb the director's decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

Beyond the decision of the director, the record reflects that the applicant has had a prolonged absence of over 45 days which disrupts his continuous residence. The record indicates that the applicant's passport was issued in Mexico on [REDACTED] and he was admitted as a B-1 visitor on [REDACTED]. Counsel concedes that the applicant had an absence which exceeded 45 days, but asserts that the applicant's absence was due to an emergent reason. According to the applicant, the prolonged absence was due to his wife's pregnancy. However, the record does not include any documentation to establish that the prolonged absence was due to the applicant's wife's pregnancy and why the applicant's presence was needed because of his wife's pregnancy. 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).

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988). There is no evidence of record to indicate that the prolonged absence was necessitated by an emergent reason.

The applicant's prolonged absence from the United States for a period exceeding 45 days, is clearly a break in any period of continuous residence he have established. As the applicant has not provided any evidence there was an "emergent reason" for his failure to return to the United States in a timely manner, he has failed to establish by a preponderance of the evidence that he continuously resided in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, *supra*.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is

concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior [REDACTED]

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish his continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before [REDACTED], [REDACTED] and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

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