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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, D.C. 20529



U.S. Citizenship and Immigration Services

PUBLIC COPY



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FILE: [Redacted]

Office: DENVER

Date: APT

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The director denied the application because the applicant had failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel argues that the director violated the applicant's right to due process when he failed to send a rescheduled interview notice to the applicant, despite the fact the applicant submitted a Form AR-11 to Citizenship and Immigration Services (CIS).

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 above requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant who was 32 years old at the time he took the basic citizenship skills and provided no evidence to establish that he was developmentally disabled does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Further the applicant 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 (INA). An applicant can demonstrate that he or she meets the requirements of section 312(a) 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).

The regulation at 8 C.F.R. § 245a.17(b) provides that an applicant who fails to pass the English literacy and/or the United States history and government tests a 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) or (a)(3) of this section.

The record reflects that the applicant was interviewed in connection with his LIFE application on April 29, 2003. The applicant failed to demonstrate a minimal understanding of the English language and a minimal knowledge of United States history and government. Furthermore, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

The applicant was rescheduled to appear for another interview on October 6, 2003 and November 25, 2003; however, the applicant failed to appear for either interview.

The applicant could still meet the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act, if he met one of the criteria defined in 8 C.F.R. § 245a.17(a)(2) and (3). In part, an applicant must establish that he:

- (2) has a high school diploma or general educational development diploma (GED) from a school in the United States; or
- (3) has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance.

The record does not reflect that the applicant has a high school diploma, a GED from a United States school, has attended, or is attending, a state recognized, accredited learning institution in the United States and, therefore, does not satisfy the regulatory requirements of 8 C.F.R. § 245a.17(2) or (3).

In response to the Notice of Intent to Deny issued on February 3, 2004, counsel asserted she was hospitalized until October 1, 2003 and did not return to work until December 2003. Counsel stated that due to an inadvertent error on behalf of a staff member, neither she nor the applicant was notified of the scheduled interview. Counsel asserted that the applicant "moved out of his home before Thanksgiving in November 2003" and did not receive either notice prior to his move.

CIS, however, is not responsible for the internal office issues of the applicant's representative.

On appeal, counsel put forth several arguments disputing the director's decision.

Counsel argues that the director abused his discretion and violated the applicant's right to due process as it failed to take into consideration her response to the Notice of Intent to Deny. Counsel further argues the director violated the applicant's right to due process, as neither the applicant nor counsel was notified of the rescheduled interview.

Counsel's argument has no merit as counsel asserted in her response to the Notice of Intent to Deny that a representative of her office "received the Notice of Interview from CIS on September 29, 2003." Consequently, the record establishes that the notice was properly served on counsel in compliance with 8 C.F.R. § 103.5a(a)(2)(iii). It is noted that an appointment notice postmarked November 12, 2003 was returned by the post office as undeliverable as it was sent to counsel's old address. It is unclear why a *third* appointment notice was sent in November 2003, as the regulation clearly states that the applicant has *one* opportunity after the failure of the first test. 8 C.F.R. § 245a.17(b).

Counsel argues that the director violated the applicant's right to due process as he failed to send the applicant's rescheduled notice to his new address despite the fact that the applicant submitted a Form AR-11 to CIS.

The record reflects that the notices advising the applicant of his reschedule interviews on October 6, 2003 and November 25, 2003 were sent *prior to* the applicant's move from his address of record. In his affidavit, on appeal, the applicant asserts that he did not move from his address of record until November 2003, and according to counsel, the applicant did not send a Form AR-11 to CIS until January 12, 2004. It is the applicant's responsibility to timely keep CIS advised of his current address. As such, the applicant's alleged failure to receive the notices must be considered to be of his own making.

As previously discussed, the applicant failed to meet the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at his interview he did not demonstrate a minimal understanding of the English language and a minimal knowledge of United States history and government.

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 applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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