

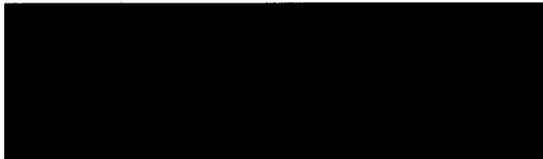
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**



22

FILE: [REDACTED] Office: Houston

Date: **JAN 06 2005**

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. The file has been returned to the office that originally decided your case. 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.

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, 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 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 is attempting to satisfy the basic citizenship skills requirement of the LIFE Act. Counsel submits documentation in support of the appeal.

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 pertinent regulation regarding aliens to be granted an exception to the basic citizenship skills requirement and those circumstances under which the Attorney General could consider a waiver of such requirement is contained at 8 C.F.R. § 245a.17(c) and states the following

Exceptions. LIFE Legalization applicants are exempt from the requirements listed under paragraph (a)(1) of this section if he or she has qualified for the same exceptions as those listed for naturalization applicants under §§ 312.1(b)(3) and 312.2(b) of this chapter. Further, at the discretion of the Attorney General, the requirements listed under paragraph (a) of this section may be waived if the LIFE Legalization applicant:

- (1) Is 65 years of age or older on the date of filing; or
- (2) Is developmentally disabled as defined under 8 C. F. R. § 245a.1(v).

The record shows that the applicant was born on May 5, 1939, and that his LIFE Act application was filed on February 19, 2002. Therefore, the applicant is not eligible to the discretionary waiver described at both section 1104(c)(2)(E)(ii) of the LIFE Act and 8 C.F.R. § 245a.17(c)(1), as he was only 62 years of age on the date his LIFE Act application was filed. It must now be determined whether the applicant is qualified for either an exception under 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b), or a discretionary waiver under 8 C. F. R. § 245a.1(v) on the basis of a developmental disability.

The requirements of paragraph (a) of this section [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 as noted in

paragraph (a) of this section. The loss of any cognitive abilities based on the direct effects of the illegal use of drugs will not be considered in determining whether a person is unable 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.

8 C.F.R. § 312.1(b)(3).

Exceptions.

(1) The requirements of paragraph (a) of this section [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. The loss of any cognitive skills based on the direct effects of the illegal use of drugs will not be considered in determining whether an individual may be exempted. 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.

(2) Medical certification. All persons applying for naturalization and seeking an exception from the requirements of § 312.1(a) and paragraph (a) of this section based on the disability exceptions must submit Form N-648, Medical Certification for Disability Exceptions, to be completed by a medical or osteopathic doctor licensed to practice medicine in the United States or a clinical psychologist licensed to practice psychology in the United States (including the United States territories of Guam, Puerto Rico, and the Virgin Islands). Form N-648 must be submitted as an attachment to the applicant's Form N-400, Application for Naturalization. These medical professionals shall be experienced in diagnosing those with physical or mental medically determinable impairments and shall be able to attest to the origin, nature, and extent of the medical condition as it relates to the disability exceptions noted under § 312.1(b)(3) and paragraph (b)(1) of this section. In addition, the medical professionals making the disability determination must sign a statement on the Form N-648 that they have answered all the questions in a complete and truthful manner, that they (and the applicant) agree to the release of all medical records relating to the applicant that may be requested by the Service, and that they attest that any knowingly false or misleading statements may subject the medical professional to the penalties for perjury pursuant to Title 18, United States Code, Section 1546 and to civil penalties under section 274C of the Act. The Service also reserves the right to refer the applicant to another authorized medical source for a supplemental disability

determination. This option shall be invoked when the Service has credible doubts about the veracity of a medical certification that has been presented by the applicant. An affidavit or attestation by the applicant, his or her relatives, or guardian on his or her medical condition is not a sufficient medical attestation for purposes of satisfying this requirement.

8 C.F.R. § 312.2(b).

The term developmentally disabled means the same as the term developmental disability defined in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act of 1987, Pub. L. 100 - 146. As a convenience to the public, that definition is printed here in its entirety:

The term developmental disability means a severe, chronic disability of a person which:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
- (5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

8 C. F. R. § 245a.1(v).

The applicant submitted two separate Form N-648, Medical Certification for Disability Exceptions, in an attempt to establish that he is developmentally disabled and eligible for an exception. The initial Form N-648 is dated March 26, 2003 and is signed by Dr. [REDACTED]. At part #3 of the N-648, where physicians are asked to describe any findings of a physical or mental disability or impairment which, in your professional medical opinion, would prevent this applicant from demonstrating knowledge of basic English language and and/or United States history and civics, Dr. [REDACTED] wrote "63 y/o Labor worker w/ 5th grade Mexican education. In my professional opinion the individual is unable to learn and master the basic English language for this exam at this point and time in his life." Then at part #6 of the Form N-648, where physicians are asked to state whether the duration of the individual's disability or impairment is temporary (less than 12 months) or permanent, Dr. [REDACTED] wrote "Permanent disability-i.e. learn basic English language due to poor education." Clearly, Dr. [REDACTED] statements establish that the applicant is unable to demonstrate an understanding of the English language because of his poor education, rather than any physical or mental disability or impairment.

The applicant submitted a second Form N-648 that is dated April 1, 2003, and is also signed by Dr. [REDACTED]. At part #3 of this second N-648, where physicians are asked to describe any findings of a physical or mental disability or impairment which, in your professional medical opinion, would prevent this applicant from demonstrating knowledge of basic English language and and/or United States history and civics, [REDACTED]

wrote "The patient is 64 y/o Hyperlipid with hearing loss secondary to noise pollution trauma years ago. He has difficulty hearing and therefore incapable of learning a new language and U.S. history and civics because of this disability." However, [REDACTED] failed to provide any explanation as to why his diagnosis relating to the cause of applicant's purported physical or mental disability or impairment had changed so radically from "poor education" as described in the initial Form N-648 dated March 26, 2003, to a "hearing loss secondary to noise pollution trauma" as described in the second Form N-648 dated April 1, 2003. In addition, Dr. [REDACTED] failed to describe any medically acceptable clinical or laboratory diagnostic techniques utilized to cause such a radical change in his diagnosis of the cause of the applicant's inability to demonstrate an understanding of the English language and a knowledge and understanding of the history and government of the United States.

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 as a result of a physical or mental disability or impairment, he is not eligible for a discretionary waiver under 8 C. F. R. § 245a.1(v).

The applicant, who is neither 65 years old nor developmentally disabled, 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 (INA). An applicant can demonstrate that he 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).

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE application, on April 8, 2003 and again on December 3, 2003. On both occasions, the applicant failed to demonstrate a minimal understanding of English and 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 remaining question, therefore, is whether the applicant satisfies the alternative "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(II) of the LIFE Act. The "citizenship skills" requirement of section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(2) and (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(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(3).

The applicant in this case 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(2).

In response to the notice of intent to deny, counsel asserted that the applicant was taking classes in an attempt to comply with the basic citizenship skills requirement. Counsel included a Certificate of Completion dated April 12, 2003, that reflects the applicant successfully completed "Special Topics in Communication ESL I and the U.S. History RDCS 1000" at Houston Community College. However, the certificate provides no confirmation that Houston Community College is "a state recognized, accredited learning institution," as required by 8 C.F.R. § 245a.17(3). While the certificate reflects that this class was worth 4.8 credit units, it provides no indication that this class was a one-year course of study as required by the regulation. Counsel also submitted a receipt from Houston Community College dated February 24, 2004, which reflects that the applicant had registered to take the very same class "RDCS 1000 ESL:I" from March 6, 2004 to June 5, 2004, that he had previously completed as reflected in the Certificate of Completion dated April 12, 2003. Neither the applicant nor counsel provided any explanation as to why the applicant would register for a class that he had already completed.

On appeal, counsel reiterates the assertion that the applicant is attempting to satisfy the basic citizenship skills requirement of the LIFE Act. Counsel urges that the applicant be allowed more time to complete classes that he is currently enrolled in to comply with this requirement. Counsel declares that pursuant to 8 C.F.R. § 245a.17(a)(3), the Service should have allowed the applicant at least six months to show compliance with the basic citizenship skills requirement from the date of his last interview on December 3, 2003, before denying the applicant's LIFE Act application on March 16, 2004. However, the six month period described in 8 C.F.R. § 245a.17(a)(3) refers to the minimum interim period allowed between the date an applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government at the first interview and the subsequent date of a second interview for that same applicant. The record shows that the applicant was accorded over seven months between the date of his first interview on April 8, 2003 and his second interview on December 3, 2003. Furthermore, 8 C.F.R. § 245a.17(b) specifies "[t]he 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." Therefore, the district director's basis for the denial of the application, that the applicant failed to establish that he satisfied the basic citizenship skills required under section 1104(c)(2)(E) of the LIFE Act, is both legally sufficient and correct. As of the date of the decision the record contains insufficient evidence to demonstrate that the applicant has complied with this requirement.

For the reasons discussed above, the applicant does not satisfy the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(II) of the LIFE Act because he has failed to demonstrate that he "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."

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 two interviews he did not demonstrate a minimal understanding of English 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.