U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

L 2

[redacted]

FILE: [redacted] Office: Houston Date: JAN 24 2005

IN RE: Applicant: [redacted]

PETITION: 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: Self-represented

PUBLIC COPY

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. 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

WAC 2405-112114

4

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

The district director concluded that the applicant failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act. The district director also denied the application because the applicant had been deported from the United States on September 10, 1986 and, therefore, had not continuously resided in this country from January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that the many hours of overtime required of him by his job prevented him from having the time necessary to devote to attending courses that would have provided him with an understanding of English.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b). Such an applicant shall be regarded as having resided continuously in the United States provided the applicant did not depart the country based upon an order of deportation. 8 C.F.R. § 245a.15(c)(3).

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 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 she 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).

As the district director indicated in the denial notice, the applicant was interviewed twice in connection with his LIFE application -- on December 11, 2002 and again on July 23, 2003. According to the notice of intent to deny, at the time of his initial interview, the applicant passed the U.S. history and government test, but was unable to

write a sentence in English. On the occasion of his second interview, the applicant was again unable to demonstrate even a minimal understanding of the English language.

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. This "citizenship skills" requirement of section 1104(c)(2)(E)(i)(II) is further 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 U.S. school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(2).

On appeal, the applicant states that he knows how to speak as well as read English. However, the applicant has provided no independent, corroborative evidence to show that he has attended, or is satisfactorily pursuing, a state recognized, accredited learning institution in the U.S. with a curriculum including a one-year course of study comprising at least 40 hours of instruction devoted to achieving an understanding of English, as required in 8 C.F.R. §245a.17(3).

At his two successive adjustment interviews at the Houston District Office on December 11, 2002 and July 23, 2003, respectively, the applicant was unable to demonstrate even a minimal understanding of English, thereby failing to satisfy that component of the "basic citizenship skills" requirement as set forth in section 1104(c)(2)(E)(i)(II) of the LIFE Act.

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

The record also indicates that on February 7, 1985, the applicant was arrested by the Immigration and Naturalization Service (now, Citizenship and Immigration Services or CIS) and charged with entering the United States without inspection. In addition, the record shows that on January 10, 1986, the applicant was ordered deported to his native Mexico by an Immigration Judge and was subsequently deported to Mexico on January 14, 1986.

As noted above, an applicant is not considered to have resided continuously in the United States if that applicant departed the country at any point during the period from January 1, 1982 through May 4, 1988 based upon an order of deportation. 8 C.F.R. § 245a.15(c)(3). Moreover, in such instance, approval of a waiver of inadmissibility under section 212(a)(9)(A) or section 212(a)(9)(C) of the Immigration and Nationality Act (INA) does *not* cure a break in continuous residence resulting from a departure from the U.S. at any time during the period from January 1, 1982 through May 4, 1988, if that alien was subject to a final exclusion or deportation

order at the time of the departure. 8 C.F.R. § 245a.18(c)(1). Accordingly, the present applicant cannot be deemed to have maintained continuous residence in the U.S. during the period in question.

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from January 1, 1982 to May 4, 1988, is admissible to the United States under the provisions of section 212(a) of the INA, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. The applicant has failed to meet this burden.

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