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U.S. Citizenship  
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Services

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FILE:



Office: Los Angeles

Date:

JAN 26 2005

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: Self-represented

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Los Angeles, California and the matter was forwarded to the Administrative Appeals Office (AAO). Normally, a case such as this would be summarily rejected by this office because a denial for lack of prosecution may not be appealed and the appeal that was submitted by the applicant was late. However, this case shall be reopened pursuant to the regulations at 8 C.F.R. 103.5(b) which provide that the AAO may of its own volition (sua sponte) reopen or reconsider a decision under section 245A of the Immigration and Nationality Act. This matter will be remanded for further action and consideration.

The director noted that at the applicant's interview on April 28, 2003, the applicant was given a Form I-72 requesting that she provide proof of enrollment in or completion of attendance in a State recognized, accredited learning institution in the US for one academic year or the equivalent thereof and which indicated at least 40 hours of instruction in English and US History and Government in support of her claim. The director noted that the applicant was given 180 days to submit the information but only sent in a copy of a school certification indicating the completion of 40 hours of English Reading and Writing only. The director then explains that in response, she sent another I-72 on October 24, 2003 indicating specifically the nature of the study required and provided the applicant an additional 90-day response time from the date of the letter. The director deemed the applicant's application as being abandoned and denied as of May 16, 2004 for lack of prosecution.

On appeal, the applicant states that after she had submitted her school certification, she received no further notices. The applicant explains that after completing 40 hours of English instruction, she also completed 45 hours of US History and Government classes. The applicant resubmits her certificate showing that she completed 40 hours of English Reading and Writing at the "Low Beginning" level and submits a Certificate of Completion from Victor Valley College showing that she completed 45 hour of "Citizenship" on March 11, 2004.

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.

As further explained in the regulations, 8 C.F.R. § 245a.17(a) – Citizenship skills, an applicant can meet the requirements of section 312(a) by establishing that:

He or she has complied with the same requirements as those listed for naturalization applicants under §§ 312.1 and 312.2 of this chapter [8 C.F.R. § 245a.17(a)(1)]; or

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. 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 . . . [8 C.F.R. § 245a.17(a)(3)].

The director, in this case, was evidently providing the applicant with an opportunity to take advantage of the above school attendance option that the applicant either did not complete or did not properly document.

However, absent documentation to support a waiver of the basic citizenship requirements, the regulations provide applicants the opportunity of two interviews. 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. 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.

The record contains no indication that the applicant was given an English literacy and a United States history and government test at her April 28, 2003 interview. Nor does the record show that the director received sufficient documentation to provide the applicant with a waiver of taking these tests. Absent satisfactory evidence of course completion and/or enrollment, the applicant shall be afforded her two opportunities to pass the required tests as provided by the above regulation. Any new decision, if adverse to the applicant, shall be certified to this office for review.

**ORDER:** This matter is remanded for further action and consideration pursuant to the above.