



U.S. Citizenship
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FILE: [REDACTED] Office: HOUSTON Date: NOV 15 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. 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, Houston, Texas, 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 she satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel states that the applicant is attempting to satisfy the basic citizenship skills requirement.

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 55 years old at the time she took the basic citizenship skills test and provided no evidence to establish that she 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 not 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).

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 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) or (a)(3) of this section.

The record reflects that the applicant was interviewed twice in connection with her LIFE application, on December 12, 2002 and again on August 12, 2003. On both occasions, the applicant failed to demonstrate a minimal understanding of English. 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, however, could still meet the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act, if she met one of the criteria defined in 8 C.F.R. § 245a.17(a)(2) and (3). In part, an applicant must establish that she:

- (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 or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(2).

On August 12, 2003, the director issued a notice requesting evidence from the Harris County Department of Education establishing that the "Spring Branch" is a state recognized, accredited learning institution, that the course of study is equivalent to once academic year and the curriculum includes at least 40 hours of instruction in English and United States history and government.

In response, the applicant submitted a photocopied statement dated October 23, 2003 from [REDACTED] who indicated that the applicant was currently attending an English as a Second Language (ESL) course through the Harris County Department of Adult Education. Mr. [REDACTED] further indicated that because the applicant's test scores were at the institution's "lowest level," she was not able at the time to take a U.S. history and government course.

In response to a Notice of Intent to Deny issued on January 20, 2004, counsel asserted that the applicant has attended and is attending a state recognized accredited learning institution. Counsel stated that the applicant should be given more than six months in order to comply with the regulation at 8 C. F.R. § 245a.17(3). Counsel submitted an additional copy of Mr. [REDACTED] October 23, 2003 statement. Counsel also submitted a second statement dated February 17, 2004 from Mr. [REDACTED] who indicated that the applicant had completed an ESL course (September 23, 2003 through December 18, 2003) and was currently attending a Spring semester course at one of the Harris County Department of Education sights in Spring Branch (Spring Branch Elementary).

The statements from [REDACTED] fail to provide any confirmation that the organization is "a state recognized, accredited learning institution." Furthermore, 8 C.F.R. § 245a.17(a)(3) requires that the applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing the Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview. In the instant case, any documentation from a state recognized, accredited learning institution should have been submitted to Citizenship and Immigration Services prior to or at the time of the applicant's second interview on August 12, 2003. Assuming, arguendo, that the organization is a state recognized, accredited learning institution, the applicant still would not qualify for the benefit being sought as the statements were not on letterhead stationery and were presented subsequent to the applicant's interview.

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 her two interviews she did not demonstrate a minimal understanding of the English language.

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.