

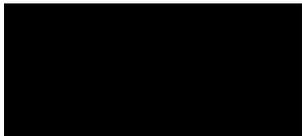
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



L2

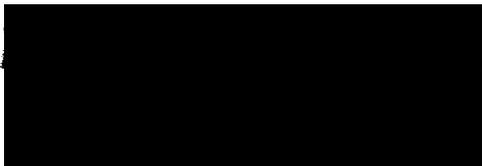
FILE: [REDACTED] Office: HOUSTON Date:

SEP 29 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 he 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 43 years old at the time he took the basic citizenship skills tests 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 not 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 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 his LIFE application, on October 31, 2002 and again on August 8, 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 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 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 a Notice of Intent to Deny issued on February 4, 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 transcripts from the Houston Community College indicating the applicant's enrollment in a 48-hour English as a Second Language (ESL) class commencing February 9, 2004, and in a 18-hour citizenship preparation class commencing March 27, 2004.

The regulation at 8 C.F.R. § 245a.17(a)(3) requires that the applicant 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, 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 8, 2003. The applicant has failed to meet this requirement as the documentation from the Houston Community College was 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 his two interviews he 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.