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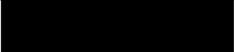
U.S. Citizenship
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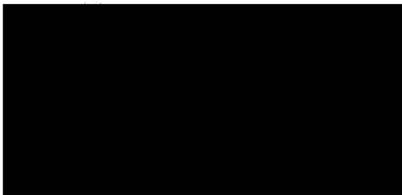
Applicant:



APPLICATION:

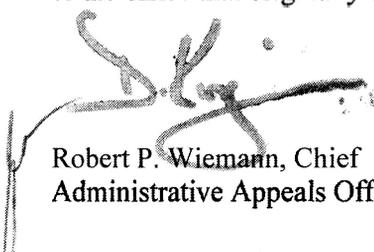
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000)

ON BEHALF OF APPLICANT:



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, Chief
Administrative Appeals Office

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

The director denied the application because the applicant 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 was enrolled in an "E.L. Civics" course through the Dallas Independent Schools District, and that the course satisfied the requirements of the statute and regulation.

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 49 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 (the Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act 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, first on July 13, 2003 and again on April 5, 2004. 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 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 meets the following under 8 C.F.R. § 245a.17:

- (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 (NOID) issued on April 16, 2004, the applicant submitted a letter dated May 6, 2004 from the Dallas Independent School District, indicating that the applicant "has been attending E.L. Civics classes since April 07, 2004." The letter provides no further information about the content of the course. On appeal, counsel asserts that the course "covers instruction in English literacy, U.S. history, and government." Counsel also asserts that the Dallas District Office has recognized this course in the past as satisfying the requirements of the regulation. Nonetheless, each application filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, Citizenship and Immigration Services (CIS) is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The documentation from the Dallas Independent School District does not provide any confirmation that the content of its "E.L. Civics" course includes any instruction on United States history and government as required by 8 C.F.R. § 245a.17(3). Furthermore, 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 CIS prior to, or at the time of, the applicant's second interview on April 5, 2004.

Counsel asserts that at the April 2004 interview, the applicant, through counsel, advised the interviewing officer that she had enrolled in the E.L. Civics course, but because the applicant "was still attempting to obtain evidence of her enrollment . . . the interviewing officer retested" the applicant. We note that the letter from the Dallas Independent School District does not state when the applicant enrolled in the course, but indicated that she began her class on April 7, two days after the applicant's second interview. Thus, the evidence does not establish that the applicant "had attended, or [was] attending a state recognized, accredited learning institution in the United States" at the time of her second interview.

Counsel argues that as the applicant timely responded to the NOID with evidence that she was enrolled in a course that satisfied the regulatory requirements, the director incorrectly concluded that the applicant had not satisfied the basic citizenship skills requirements. Counsel asserts that "[b]y issuing the N.O.I.D., C.I.S. afforded Appellant thirty days to offer any additional evidence to overcome the grounds for denial," and that the applicant did this with the letter from the Dallas Independent School District.

We note that the director issued her NOID pursuant to the regulation at 8 C.F.R. § 245a.20(a)(2), which provides that when an adverse decision is proposed, CIS "shall" notify the applicant of its intent to deny the

application and the basis for the proposed denial. The applicant will be granted 30 days from the date of the notice in which to respond. The director properly notified the applicant that she had failed to pass her basic citizenship skills tests, that CIS intended to deny her application, and that she was accorded 30 days in which to submit rebuttal evidence. Although the applicant submitted a timely response, the evidence did not establish that she satisfied the requirements for submitting evidence outlined in 8 C.F.R. §§ 245a.17(a)(2) and (3), including timely submission of proper documentation regarding her class attendance.

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 either of her two interviews did she demonstrate a minimal understanding of the English language. Further, she 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.