

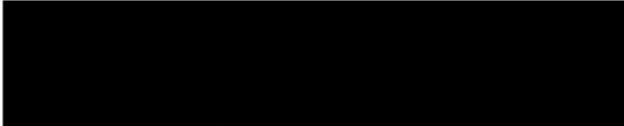
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: DALLAS Date: DEC 22 2006
MSC 02 032 61456

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:

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, 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 (AAO) on appeal. The AAO affirms the director's decision denying the LIFE application. The matter will be remanded for further action and consideration.

The district director denied the application, finding that the applicant had not established that he possessed a minimal understanding of ordinary English and knowledge and understanding of the history and government of the United States.

On appeal, the applicant asserts that he has fulfilled the basic citizenship requirements under section 245A(b)(1)(D)(iii)(I) of the Immigration and Nationality Act.

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 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 who are developmentally disabled. *See also* 8 C.F.R. § 245a.17(c).

An applicant may establish that he or she has met the requirements of section 312(a) of the Immigration and Nationality Act (Act) by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. *See* 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 and 312.2.

An applicant may also establish that he or she has met the requirements of section 312(a) of the Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2).

Finally, an applicant may establish that he or she has met the requirements of section 312(a) of the Act by providing evidence that he or she has attended or is attending a state recognized, accredited learning institution in the United States, following a course of study which spans one academic year and that includes 40 hours of instruction in English and United States history and government. The applicant may provide documentation of such on the letterhead stationary of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3).

The applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after 6 months: to pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit evidence that he or she has attended or is attending a state-recognized, accredited learning institution in the United States, following a course of study which spans an academic year and that includes 40 hours of instruction in English and United States history and government. *See* 8 C.F.R. § 245a.17(b).

The record indicates that the applicant was interviewed on March 25, 2003. At that interview the applicant failed to demonstrate sufficient knowledge of ordinary English and of the knowledge and understanding of the government and history of the United States. On January 12, 2004, the applicant was afforded a second opportunity to demonstrate an understanding of ordinary English and knowledge and understanding of the government and history of the United States. The record shows that the applicant was unable to demonstrate that he possessed sufficient knowledge and understanding of the government and history of the United States.

On January 15, 2004, the applicant was sent a Notice of Intent to Deny (NOID) explaining that he had failed to establish satisfied the basic citizenship skills requirement of the LIFE Act and was given thirty (30) days to respond with additional evidence. The applicant failed to present any new evidence.

On February 12, 2004 the applicant's petition was denied for the reasons set out in the NOID.

On appeal, the applicant states he is enrolled in an English studies program. In support of this assertion, the applicant submitted the following relevant documentation:

A copy of an April 13, 2004 letter from [REDACTED] of Iglesia Luterana San Miguel stating that the applicant is currently attending an English as a Second Language (ESL) class.

The evidence submitted to support applicant's assertion that he is enrolled in an educational program sufficient to satisfy 8 C.F.R. § 245a.17(a)(3) is not persuasive. The regulation requires that the program in which the applicant is enrolled must be a state recognized, accredited learning institution, which certifies attendance. The applicant failed to establish that the institution which drafted the letter is a state recognized accredited learning institution and therefore does not satisfy the criteria established by regulation.

The regulation also states that the curriculum of any program in which an applicant is enrolled must be for at least one academic year and include at least 40 hours of instruction in English and United States history and government. In this case the letter submitted does not state the duration of the classes that the applicant is attending, nor does it detail how the program is commensurate with an academic year of study including 40 hours of instruction in English and United States history and government. For this additional reason the evidence submitted is not persuasive.

The regulations at 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) also state that an applicant must submit evidence to show compliance with the basic citizenship skills requirement “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” In this case the applicant failed to present any evidence of qualifying enrollment in an educational program until after the two separate interviews and after a NOID had been issued by the director. Thus, the evidence submitted on appeal it was not timely presented with the applicant's I-485 or at the applicant's interviews. For this additional reason the application may not be approved.

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 AAO will not disturb the director’s decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

Although the director found the applicant ineligible for permanent resident status under section 1104 of the LIFE Act, the director failed to consider the applicant’s eligibility for adjustment of status to that of a temporary resident. The regulation at 8 C.F.R. § 245a.6 provides, in pertinent part:

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director *shall* consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A).

(Emphasis added).

Accordingly, this case is remanded for a determination as to the applicant’s eligibility for adjustment of status to that of a temporary resident pursuant to 8 C.F.R. § 245a.6.

ORDER: The application is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the applicant, is to be certified to the Administrative Appeals Office for review.