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U.S. Citizenship
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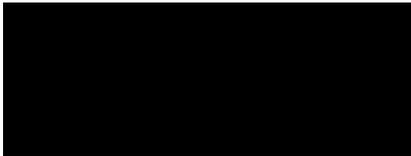


FILE: [REDACTED] Office: DALLAS Date: JUN 02 2006
MSC 02 144 61137

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, 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 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 asserts that the director erred in his decision as the applicant has satisfactorily pursued a course of study pursuant to the regulations. Counsel states that the applicant is attending classes offered by the Dallas Independent School District (DISD). Counsel states that subsequent to his second interview, the applicant immediately enrolled in an approved course offered by DISD.

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 40 years old at the time he took the basic citizenship skills test 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 (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 his LIFE application, on March 7, 2003, and again on March 22, 2004. On the 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 have met the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act by showing, pursuant to 8 C.F.R. § 245a.17(a), 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(a)(2).

In response to a Notice of Intent to Deny issued on March 24, 2004, counsel submitted a letter dated April 22, 2004 from [REDACTED] adult education program director of the [REDACTED] indicated that the [REDACTED] is a state recognized, accredited learning institution; the course of study is for one year; the curriculum includes at least 40 hours of instruction in English and United States history and government; the applicant is attending the Literacy Civic/Citizenship class for the 2003-2004 school year; and the applicant has completed eight hours of instruction.

On appeal, counsel asserts that the applicant made a good faith effort, prior to his second interview, to register for the DISD English/civics class. Counsel claims that on March 16, 2004, the applicant attempted to register for said course, but the school was closed due to the spring break holiday.

Counsel's claim, however, is somewhat suspect as it is unclear why the applicant waited until a week before his second interview to register for the course. The applicant had over a year from the date of his first interview to register.

Counsel asserts that the applicant had complied with the Notice of Intent to Deny, which provided the applicant the opportunity to submit any evidence that may overcome the reason for denial. Counsel argues that if a predetermination to the deny the application had already been made, regardless of any additional attempts to satisfy the basic civics requirement, then the 30 days "would be mere window dressing and would be a waste of the appellant's, as well as the Service's time."

Counsel's argument has been considered. The regulation, however, requires that Citizenship and Immigration Services shall notify the applicant of its intent to deny the application prior to issuing its decision. *See* 8 C.F.R. § 245a.20(a)(2).

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. The applicant failed to meet this requirement as the documentation from the [REDACTED] was presented *subsequent to* the applicant's interview of March 22, 2004.

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.