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U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted] Office: DALLAS Date:

IN RE: Applicant: [Redacted]

MAR 30 2006

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:

[Redacted]

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.

A handwritten signature in cursive script that reads "Mai Johnson".

3 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, 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 states that in his and the applicant’s presence, the immigration officer, at the time of the applicant’s second interview, “indicated unequivocally that appellant had PASSED his basic English and civics requirements.”

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 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 June 3, 2003, and again on March 12, 2004. On the first occasion, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. On the second occasion, 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 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(a)(2).

On appeal, counsel asserts that a response to the director's Notice of Intent to Deny was sent via Federal Express and was received by the Dallas District Office on April 9, 2004. Counsel submits an additional copy of said response. In his response, counsel asserted that he accompanied the applicant to his second interview and witnessed first-hand that the applicant passed the English and civics tests administered by the immigration officer.

Counsel asserts, on appeal, that on July 26, 2004, he received a notice via e-mail from the Dallas District Office indicating that according to Citizenship and Immigration Services (CIS) records, the applicant had failed the history and writing portion on the first attempt and had also failed the writing portion at the second interview. Counsel states that despite the applicant's belief that CIS denied his application in error, he has since enrolled in an accredited, government approved English/civics class. Counsel contends that had the applicant not been misinformed at his second interview, he would have promptly taken the necessary steps to enroll in and attend an accredited English/civics class.

In a subsequent brief, counsel asserts that further investigation of the applicant's immigration file sheds light on the discrepancy between the immigration officer's indication that the applicant had passed and CIS's subsequent denial of the applicant's adjustment under the LIFE act. Counsel asserts in part:

Appellant's second exam reveals that the categories of "History/Civics" and "Reading" are clearly circled "pass." The confusion arises out of the "WRITING" category, for which both "waived" and "failed" are circled.

Counsel argues that this discrepancy illustrated a lack of notice and improper adjudication of the applicant's LIFE application. Counsel requests the AAO to look to possible scenarios, and states the applicant should be afforded an opportunity to re-take the writing portion of the exam. Counsel states in part:

It is likely that the immigration officer opted to waive the writing requirement at the interview, perhaps due to appellant's poor writing skills in his native language or his positive score on the other portions of the exam. It appears that the exam was reviewed a second time before final adjudication, at which point CIS made the decision to fail Appellant on the writing portion. It is probable that CIS re-considered its initial decision after Appellant was told he had passed the entire exam at the interview.

The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the March 12, 2004 test form shows the applicant's attempt to write a sentence, and the officer's note stating "cannot spell even in own language." The officer circled both "fail" and "waived." The

reference to “waived” is not clear, but the applicant’s effort at writing and the officer’s note support the conclusion that the applicant failed the test.

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 March 12, 2004. The applicant failed to meet this requirement as the documentation from Mountain View College was presented *subsequent to* the applicant’s interview.

Finally, counsel cites no statute or regulation that compels the director to schedule the applicant for a third interview. The regulation only provides *one* opportunity after the failure of the first test. 8 C.F.R. § 245a.17(b).

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 ability to write in 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.