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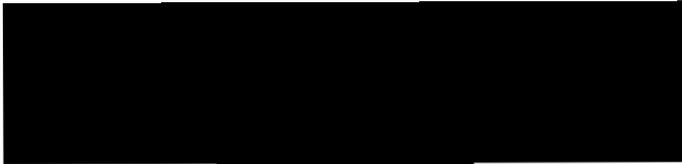
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: DALLAS

Date:

NOV 08 2006

MSC 02 239 64702

IN RE: 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:

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.

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 Act application, and remands the case 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 he has fulfilled the basic citizenship requirements under section 245A(b)(1)(D)(iii)(I) of the Immigration and Nationality Act.<sup>1</sup> The applicant also asserts that he timely responded to the director's Notice of Intent to Deny (NOID) with evidence that he was enrolled in a qualifying educational program.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), an applicant for permanent resident status must also 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).

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<sup>1</sup> The applicant submitted a form G-28, Notice of Entry of Appearance as Attorney or Representative, which is signed by a representative of an organization, [REDACTED] that is no longer recognized or authorized to appear before the Service. 8 C.F.R. § 292.2.

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 June 19, 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 March 22, 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 such knowledge.

On March 24, 2004 the applicant was sent a NOID and given thirty (30) days to respond with additional evidence. The applicant responded to the NOID on April 27, 2004, requesting an extension of time to satisfy the citizenship skills requirement.

On appeal, the applicant asserts that he responded to the director's NOID. He further asserts that he is enrolled in an English studies program which satisfies the criteria established by 8 C.F.R. §§ 245a.17(a)(2) and (3). In support of this assertion the applicant submitted the following relevant documentation:

A letter from \_\_\_\_\_ stating that the applicant is attending an Adult Basic Education Program on Saturdays from 10:00 am to 1:00 pm at the \_\_\_\_\_ At the top of the letter in basic font are the words "Dallas Independent School District, Adult Basic Education."

The evidence submitted to support the applicant's assertion that his enrollment in an educational program is sufficient to satisfy 8 C.F.R. §§ 245a.17(a)(2) and (3) is not persuasive. The regulation states that the program in which an applicant is enrolled must be a state recognized, accredited learning institution in the United States. In this case the letter submitted does not appear to actually be from the Dallas Independent School District, as it does not have a letterhead, fails to detail how this program is administered by the Dallas Independent School District and how it relates to any state recognized educational program. The applicant failed to establish that this program is administered by a state recognized, accredited learning institution.

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. The letter states that the applicant has completed "6 hours", however, the letter does not explain if these are academic credit hours, or place these hours in the context of a larger, qualifying educational program with the Dallas Independent School District. 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) 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 issued by the director, and thus does not satisfy the basic citizenship skills requirement of section 1104(c)(2)(E)(i) of the LIFE Act.

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 director's decision denying the LIFE Act application is affirmed. 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.