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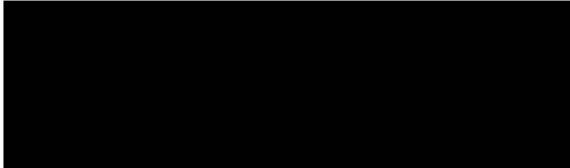
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
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Services

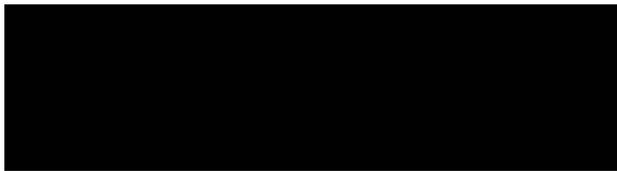
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FILE: MSC 02 225 62756 Office: HOUSTON Date: NOV 14 2006

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. 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, Houston, 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 director denied the application because the applicant had failed to establish that she satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, the applicant states that she completed a 40-hour course of study from May 1, 2003 to August 16, 2003, and that she would submit evidence that this course was the equivalent of one academic year according to the institution.¹ The applicant indicated that a brief and or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, however, more than 26 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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 45 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).

¹ The record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by [REDACTED] as attorney for the applicant. However, on September 1, 2006, Mr. [REDACTED] was suspended from the practice of law and is not currently authorized to practice law in Texas. Therefore, the AAO cannot recognize him as an authorized representative in this proceeding.

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 six 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 April 1, 2003 and again on April 28, 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 he meets 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 course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government.

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).

The record contains a December 4, 1991 letter from the [REDACTED] Community Adult School, indicating that the applicant was enrolled in an English as a Second Language program and had completed over 101 hours of classroom instruction. The letter did not indicate that the course of study included any instruction in United States history and government, and therefore did not satisfy the requirements of 8 C.F.R. § 245a.17(3). The applicant also submitted an August 20, 2003 letter from [REDACTED] however, the letter does not provide any confirmation that it is “a state recognized, accredited learning institution,” or that the course is for a period of one academic year as required by 8 C.F.R. § 245a.17(a)(3). Accordingly, the evidence does not establish that the applicant satisfies 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.

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 AAO for review.