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U.S. Citizenship
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Services

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[Redacted]

FILE:

MSC 02 039 63992

Office: HOUSTON

Date: NOV 29 2006

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:

[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. 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 "R. 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, Houston, and is now before the Administrative Appeals Office (AAO) on appeal. The AAO remands the case for further action and consideration.

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 applicant was never issued a Notice of Intent to Deny (NOID) as required by 8 C.F.R. § 245a.20(a)(2). Counsel does not dispute that the applicant failed the English test at his interviews, but contends that the applicant submitted certification from Houston Community College to show his compliance with the basic citizenship skills requirement. Counsel asserts that the applicant has thus fulfilled the basic citizenship skills requirement by satisfying the alternative listed at 8 C.F.R. § 245a.17(a)(3): attendance in a course with a curriculum including at least 40 hours of instruction in English and United States history at a state recognized, accredited learning institution in the United States for a period of one academic year (or the equivalent thereof according to the standards of the learning institution).

8 C.F.R. § 245a.20(a)(2) requires that when an adverse decision is proposed, an applicant for LIFE legalization must be notified of the intention to deny the application and the basis for the proposed denial, and granted a period of 30 days to respond to this notice.

Here, the applicant was issued a decision, but the record lacks evidence that the director notified the applicant of the intention to deny the application and the basis for the proposed denial, or granted the applicant 30 days to respond to such notice. The record shows that the applicant was issued the decision on October 18, 2004, less than 30 days after the applicant was interviewed and failed the test of English ability and knowledge of U.S. history and government on October 1, 2004. The record also contains a notice dated October 1, 2004 that informs the applicant that he had failed his second test and would not be interviewed again, but this notice did not inform the applicant that his application would be denied and that he had 30 days to respond to the notice. The record contains the results of the test administered on October 1, 2004, but does not contain the results from an earlier test. The record does contain, however, a notice dated August 8, 2003 stating that the applicant had failed the English test on that date.

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 is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does he 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 (Act). An applicant can demonstrate that he meets the requirements of section 312(a) 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)(I) and (2).

In the alternative, an applicant can satisfy the basic citizenship skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act. The “citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) is defined by regulation at 8 C.F.R. §§ 245a.17(a)(2) and (3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States. . . . 8 C.F.R. § 245a.17(a)(2), or

He or she 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. . . . 8 C.F.R. § 245a.17(a)(3).

The regulations at 8 C.F.R. §§ 245a.12(d)(10), and 245a.17(a)(2) and (3) specify that applicants may 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....”

The regulation at 8 C.F.R. § 245a.17(b) states 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) and (a)(3) of this section [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)]. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

The record contains a Certificate of Completion from Houston Community College dated August 31, 2002 that reflects the applicant's successful completion of a course in "ESL I — Basic English, U.S. History & Government." The record shows that the applicant presented this certificate by the time of his second interview on October 18, 2004. The certificate states that the applicant completed "4.8 CEU's." However, the certificate does not indicate that the course of study was for a period of one academic year (or the equivalent thereof according to the standards of the learning institution). There is no evidence in record showing the exact duration of the course or the dates on which the applicant attended.

As evidence that the course meets the requirements of 8 C.F.R. § 245a.17(a)(3), counsel submits a letter from [REDACTED] of the Houston Community College System that describes the course completed by the applicant. However, this letter only serves to contradict counsel's assertions, as it states that the course completed by the applicant was only "the equivalency of a one semester credit course." As stated above, to meet the requirements of 8 C.F.R. § 245a.17(a)(3), a course of study must be for a period of one academic year. Consequently, the evidence fails to support the applicant's contention that he has fulfilled the basic citizenship skills requirement by demonstrating compliance with 8 C.F.R. § 245a.17(a)(3).

Nevertheless, because the applicant was not provided notice of the director's intent to deny his application on this basis, followed by a 30-day period in which the applicant was granted the opportunity to respond to this notice, the case must be remanded for issuance of a new decision. If the director determines that the application should be denied, the director shall issue a Notice of Intent to Deny containing a detailed statement of the basis for the proposed denial, and the applicant must be granted a period of 30 days to respond to this notice.

In addition, 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 the issuance of a new decision. If the director determines that the application should be denied, the director shall issue a Notice of Intent to Deny containing a detailed statement of the basis for the proposed denial, and the applicant must be granted a period of 30 days to respond to this notice. If, following this period, the director's final decision is adverse to the applicant, it shall be certified to this office. In addition, if the director determines that the applicant has not established eligibility under section 1104 of the LIFE Act, the director shall make 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.