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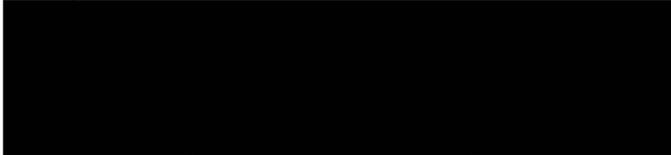
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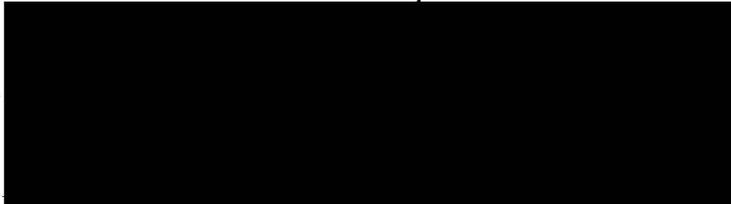


MSC 02 243 68093

Office: DALLAS

Date: OCT 02 2008

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:



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, 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 twice failed examinations meant to establish that the applicant had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel asserts that the applicant is currently enrolled and in good standing at the Rosemont Adult Education Center in the Fort Worth Independent School District.

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding 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 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).

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).

On May 31, 2002, the applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On March 26, 2003, the applicant was interviewed in connection with his LIFE Act application. He failed to demonstrate a minimal understanding of ordinary English during the examination portion of the interview.

On November 18, 2003, the applicant interviewed a second time and again failed to demonstrate a minimal understanding of ordinary English at the second LIFE interview.

On December 8, 2003 the director issued the notice of intent to deny (NOID) in which she indicated that the applicant had failed the basic citizenship skills examinations at each of his interviews and giving the applicant 30 days to provide any additional evidence establishing eligibility.

In a letter dated December 11, 2003 counsel for the applicant responded by asserting that applicant had registered and started attending English classes. No additional evidence was provided.

On January 21, 2004, the director denied the application based on the reasons set out in the NOID.

On appeal, counsel asserts that the applicant is currently enrolled and in good standing at the Rosemont Adult Education Center in the Fort Worth Independent School District. In support of these assertions the following evidence was submitted:

1. A copy of a certificate from Mountain View College, with Mountain View College letterhead, dated February 25, 2005, which indicates that the applicant completed an English as a Second Language (ESL) class.
2. A copy of a certificate from Mountain View College, with Mountain View College letterhead, dated July 31, 2004, indicating the applicant completed a citizenship basics class.
3. A copy of a document labeled Fort Worth Independent School District, containing a seal and dated April 28, 2004, which states that the applicant has "progressed" in an ESL program.

4. A copy of a document labeled Fort Worth Independent School District, bearing a different letterhead from the previous document, dated January 21, 2004, stating that the applicant is enrolled in good standing in an adult education ESL/GED program.

The record verifies that the applicant did not pass the basic citizenship skills examination on March 26, 2003 and on November 18, 2003.

The evidence submitted to support counsel's assertion that the applicant is enrolled in an educational program 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 certificates from Mountain View College appear to be authentic, but the two documents from the Fort Worth Independent School District (FWISD) are different, bearing different logos and letterhead, and not clearly related to the same educational program or institution. Notwithstanding the inconsistencies in the FWISD documents, the evidence submitted is not sufficient to demonstrate that the applicant is participating in a qualifying educational program.

The regulation at 8 C.F.R. § 245a.17 states that 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 regulation 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. 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. In fact, three of the documents submitted are dated after the date of the director's decision. Thus, regardless of the nominal and questionable evidence submitted it was not timely presented with the applicant's I-485 or at interviews. For this additional reason the evidence presented by the applicant, and counsel's argument that the applicant's response to the NOID were timely, are moot.

The evidence submitted by the applicant with regard to this issue is not extensive. The evidence is relevant and may be credible, but it fails to establish that the applicant is participating in a qualifying educational program and therefore the applicant has not established that she 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).

Finally, the record reflects that on April 27, 1987, the applicant was arrested by the Los Angeles Police Department and subsequently charged with driving under the influence of alcohol, .08% more weight alcohol while driving vehicle, and unlicensed driver. On September 1, 1987, the applicant was convicted of the latter two misdemeanor offenses in the Municipal Court of Los Cerritos Judicial District. (Cause No. [REDACTED]) These two misdemeanor convictions do not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

The applicant has failed to demonstrate that he has met the basic citizenship skills requirement as described at 1104(c)(2)(E) of the LIFE Act. Thus, he is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.