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U.S. Citizenship  
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FILE:

MSC 02 022 64970

Office: EL PASO

Date:

**AUG 13 2007**

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. 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.

  
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, El Paso, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act. The director also denied the application because the applicant failed to respond to a request for evidence (RFE).

On appeal, counsel states that, although the applicant failed the citizenship skills test at the time of his interviews, he has successfully completed fifty-seven hours of instruction in English and United States history and government. Counsel further asserts that the applicant submitted the requested documents in response to the RFE. Counsel submits a brief and additional documentation in support of the appeal.

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 48 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 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 his LIFE application, first on March 12, 2003 and again on January 22, 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(a)(2).

The record does not establish that the applicant submitted a response to the director's Notice of Intent to Deny (NOID) issued on May 26, 2004. On appeal, counsel submits a September 3, 2004 letter from the Doña Ana Branch Community College verifying that the applicant was attending the Gadsden Learning Center/Adult Basic Education program, and was currently attending an English as a Second Language and citizenship classes. The letter indicated that the applicant had completed 57 hours of instruction to date.

The documentation from the Doña Ana Branch Community College does not provide any confirmation that the applicant's course of study was for a period of one academic year (or the equivalent thereof according to the standards of Doña Ana Branch Community College) as required by 8 C.F.R. § 245a.17(a)(3). 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 Citizenship and Immigration Services prior to or at the time of the applicant's second interview on January 22, 2004. Assuming, *arguendo*, that the applicant's course of study at Doña Ana Branch Community College was for a period of one academic year, the applicant still would not qualify for the benefit being sought as the documentation from the Doña Ana Branch Community College was presented *subsequent to* the applicant's interview.

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.

The director also denied the application because the applicant failed to respond to the RFE. The record contains a copy of a Federal Bureau of Investigation (FBI) criminal history report, which reflects that the applicant was arrested on October 19, 1981 by the Sheriff's Office of El Paso, Texas for possession of under two ounces of marijuana. The record reflects that on March 12, 2003, the applicant was issued a Form I-72

instructing him to submit an original or certified copy of court dispositions for all of his arrests. In response, the applicant submitted an April 25, 2003 letter from the County Clerk for El Paso County, certifying that there were no records of a misdemeanor conviction for the applicant. The applicant also submitted a December 10, 2003 letter from the El Paso County Sheriff's Department, certifying that its records reflected that the applicant was arrested on October 19, 1981 for possession of less than two ounces of marijuana and "no disposition" of the offense. Letters dated July 10 and December 10, 2003 from the District Clerk's office for El Paso County certified that there had been no felony indictments filed against the applicant.

On January 22, 2004, the director issued a request for additional evidence, requesting the applicant to submit copies of all of his police arrest records. The applicant resubmitted copies of the previously submitted documentation, which was received for by the adjudicating officer on March 26, 2004. On appeal, the applicant submits undated letters from the agencies discussed above.

The record therefore reflects that the applicant complied with the requests for additional documentation from the district office. Nonetheless, the applicant has not established eligibility for benefits under section 1104(c)(2)(E)(i) of the LIFE Act, and his application may not be approved.

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