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[Redacted]

FILE:

[Redacted]

Office: SAN DIEGO

Date:

JUN 15 2007

MSC 02 228 62052

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. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, San Diego, California, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The applicant filed a Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of an INS Officer. Pursuant to 8 C.F.R. § 245a.20(b), jurisdiction for an appeal of the denial of a LIFE Act application lies with the Associate Commissioner of Examinations (the Administrative Appeals Office ((AAO)). The matter is now before the 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 he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, the applicant stated that neither he nor his attorney received the director's Notice of Intent to Deny (NOID). The applicant also submitted a letter verifying his enrollment in a citizenship class.

The record reflects that the director mailed her NOID of May 21, 2004 to the applicant at his address of record via certified mail. The record does not contain a signed postal return receipt signed by the applicant acknowledging receipt of the NOID. The record also does not reflect that the U.S. Postal Service returned the letter as undeliverable or that the director mailed a copy of the NOID to the applicant's attorney. As the applicant submitted documentation on appeal that was responsive to the NOID, the AAO will consider all of the evidence of record.

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 41 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 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).

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 December 12, 2002 and again on April 16, 2004. On both occasions, the applicant failed to demonstrate a minimal understanding 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).

On appeal, the applicant submits a February 17, 2005 letter from National City Adult School, verifying his enrollment and attendance in a citizenship class. The letter indicates that the applicant has completed “a total of 40 hours.” The documentation from National City Adult School does not, however, provide any confirmation that the course content of the class in which the applicant enrolled is for a period of one academic year (or the equivalent thereof according to the standards of National City Adult School) 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 April 16, 2004. The letter from National City Adult School was submitted subsequent to the applicant’s second 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.

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.

According to Federal Bureau of Investigations records, the applicant was convicted of alien smuggling, illegal entry and false statement. Case No. [REDACTED] The record does not reflect the sentence imposed for these convictions. The applicant was also convicted of illegal entry into the United States in violation of 8 U.S.C. § 1325, and was sentenced to 30 days confinement. Case No. [REDACTED] The record also reflects that the applicant was convicted on March 5, 1982 in the Municipal Court in Laguna Miguel, California for violations of the California Vehicle Code, sections 4454a (failure to have registration papers), 28071 (failure to meet bumper requirements), 5201 (positioning of license plates) and 40508a (failure to appear, which is a misdemeanor under current California law). The record is unclear as to the sentence that was imposed on the applicant for these convictions. On remand, the director should also address the applicant's criminal history.

According to evidence in the record, the applicant was deported in 1981 and again on July 19, 1989. The applicant filed a Form I-212, Application for Admission into the United States after Deportation or Removal, on June 3, 2002, which remains adjudicated. (MSC 02 246 61942). The applicant is also the beneficiary of an approved Form I-130, Petition for Alien Relative, (WAC 01 221 51689), that was filed by his brother.

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.