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U.S. Citizenship
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[REDACTED]

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FILE: [REDACTED]
MSC 02 057 66020

Office: DALLAS

Date: NOV 28 2007

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. The file has been returned to the National Benefits Center. 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 I. 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, Texas, 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 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 1) the applicant has enrolled in English and United States Civics classes and 2) the applicant should not be subjected to the exam requirement due to his medical impairment. Counsel contends that the applicant is eligible for a waiver of the Basic Citizenship Skills requirement. Counsel provides evidence to support the above assertions.

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 pertinent regulation regarding aliens to be granted an exception to the basic citizenship skills requirement and those circumstances under which the Attorney General could consider a waiver of such requirement is contained at 8 C.F.R. § 245a.17(c) and states the following:

Exceptions. LIFE Legalization applicants are exempt from the requirements listed under paragraph (a)(1) of this section if he or she has qualified for the same exceptions as those listed for naturalization applicants under §§ 312.1(b)(3) and 312.2(b) of this chapter. Further, at the discretion of the Attorney General, the requirements listed under paragraph (a) of this section may be waived if the LIFE Legalization applicant:

- (1) Is 65 years of age or older on the date of filing; or
- (2) Is developmentally disabled as defined under 8 C. F. R. § 245a.1(v).

The record shows that the applicant was born on April 26, 1955, and that his LIFE Act application was filed on November 26, 2001. Therefore, the applicant is not eligible to the discretionary waiver described at both section 1104(c)(2)(E)(ii) of the LIFE Act and 8 C.F.R. § 245a.17(c)(1), as he was only 46 years of age on the date his LIFE Act application was filed. It must now be determined whether the

applicant is qualified for either an exception under 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b) on the basis of a physical or mental impairment, or a discretionary waiver under 8 C.F.R. § 245a.1(v) on the basis of a developmental disability.

Physical or mental impairment

The first issue to be addressed is whether the applicant has established he is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable physical or mental impairment.

The regulation at 8 C.F.R. § 312.1(b)(3) states, in pertinent part:

The [basic citizenship skills requirement] shall not apply to any person who is unable, because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language For purposes of this paragraph, the term medically determinable means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency as outlined in paragraph (c) of this section.

All persons applying for naturalization and seeking an exception from the requirements of 8 C.F.R. § 312.1(a) and paragraph (a) of this section based on the disability exceptions must submit Form N-648, Medical Certification for Disability Exceptions, to be completed by a medical or osteopathic doctor licensed to practice medicine in the United States 8 C.F.R. § 312.2(b)(2)

The applicant has not established that he has a medically determinable impairment as defined in the pertinent regulations. The record reflects that the applicant failed to submit a Form N-648 as required under 8 C.F.R. § 312.1(b)(3). On appeal, counsel submits a September 27, 2002, Parkland Health & Hospital System, Final Report by [REDACTED], with supporting medical records. Dr. [REDACTED] indicated that the applicant had a clinical history of headaches, blurring vision and forgetfulness for one week. [REDACTED] stated the following:

FINDINGS: No high or low density intraparenchymal lesions are seen. No intra or extraaxial fluid collections are indentified. The ventricles are normal in size and configuration. There is no midline shift or mass effect. The paranasal sinuses and mastoid air cells are pneumatized without evidence of fracture. IMPRESSION: 1. Normal head CT.

The Final Report fails to indicate any impairment from anatomical, physiological, or psychological abnormalities which can be medically shown to have resulted in functioning so impaired as to render

the applicant unable to demonstrate an understanding of the English language. Also, there is no indication that the applicant suffers from a medical impairment which has lasted or is expected to last at least 12 months.

The record contains a Form I-693 Medical Examination, dated May 26, 2005, signed by [REDACTED] [REDACTED] indicated that he found "no apparent defect, disease or disability." Dr. [REDACTED] remarked that "this applicant is a Healthy, Well-Developed and Well-Adjusted Person" The record also contains a second Form I-693 Medical Examination, dated November 8, 1990, signed by [REDACTED] [REDACTED] indicated that the applicant had "Myopia (LT.) Eye 20/200." There is no indication that this condition results from anatomical, physiological, or psychological abnormalities which can be medically shown to have resulted in functioning so impaired as to render the applicant unable to demonstrate an understanding of the English language. Also, there is no indication in the record that the condition is a medical impairment which has lasted or is expected to last at least 12 months. Therefore, the applicant has not established that he is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable physical or mental impairment.

Developmentally disabled

The next issue to address is whether the applicant has established he is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable developmental disability.

The regulation at 8 C.F.R. § 245a.1(v) states:

The term developmental disability means a severe, chronic disability of a person which:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
- (5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

On appeal, counsel submits evidence in an attempt to establish that the applicant is eligible for an exception to the basic citizenship skills requirement. The evidence in the record is insufficient to

establish that the applicant is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable developmental disability pursuant to 8 C.F.R. § 245a.1(v)(5).

If we accepted counsel's assertions at face value¹, the applicant suffers from disability which is attributable to a mental or physical impairment due to a head injury in 1980. However, this condition did not manifest in the applicant before he attained the age of twenty-two as required under 8 C. F. R. § 245a.1(v)(2). Also, the evidence does not indicate that his condition is likely to continue indefinitely or results in a substantial functional limitation as required under 8 C. F. R. § 245a.1(v)(3) and (4). Furthermore, there is no evidence that the applicant suffers from a disability resulting in his need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated pursuant to 8 C. F. R. § 245a.1(v)(5).

For the reasons stated above, it cannot be concluded that the applicant suffers from a physical or mental disability or impairment that would allow him to be considered developmentally disabled so as to qualify for the exceptions contained at 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b). As the applicant has failed to establish that he is developmentally disabled, he is not eligible for a discretionary waiver under 8 C.F.R. § 245a.1(v).

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 (INA). 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)(1) 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 Basic Citizenship Skills requirement of the section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(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

¹ The AAO notes that the record contains the results of a medical examination of the applicant in which the physician found "no apparent defect, disease or disability."

(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).

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants 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”

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.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE Act application, on October 24, 2003, and again on June 3, 2005. On both occasions, the applicant failed to demonstrate a minimal understanding of ordinary English. The applicant does not dispute this on appeal. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). The applicant does not have 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).

In a September 17, 2005, Notice of Decision, the director stated that the applicant provided no new evidence in response to the director’s Notice of Intent to Deny dated June 16, 2005. On appeal, counsel submitted an October 17, 2005, letter by ESOL Advisor, [REDACTED], of Mountain View College. The affiant stated that the applicant is currently registered for English Literacy (ESL) and Civics classes through the school. The affiant confirmed that the school is a state recognized, accredited learning institution, and the school verifies the applicant’s attendance. The affiant stated that the classes total 60 (sixty) hours, offered year-round and equivalent to one year of study. The applicant did not submit this evidence prior to or at the time of the second interview as required under 8 C.F.R. § 245a.17(a)(3). The evidence was submitted on October 18, 2005, 137 days after the second interview.

For the reasons discussed above, the applicant does not satisfy the Basic Citizenship Skills requirement of section 1104(c)(2)(E)(i)(II) of the LIFE Act because he has failed to demonstrate that he “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.”

As previously discussed, the applicant failed to meet the Basic Citizenship Skills requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at his two interviews he did not demonstrate a minimal understanding of English and a minimal knowledge of United States history and government.

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.

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