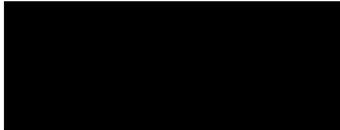




U.S. Citizenship
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Services

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FILE:  Office: DALLAS Date: OCT 01 2007
MSC 02 005 61429

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. Any further inquiry must be made to that office.

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, Texas, and is now before the Administrative Appeals Office 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, the applicant asserts that in response to the Notice of Intent to Deny, he provided evidence of his enrollment in classes offered by the Dallas Independent School District. The applicant states he has the necessary knowledge to pass the examination.

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 49 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 6 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, on January 24, 2003, and again on April 12, 2004. On the both occasions, the director determined that the

applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government.¹

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 have met the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act by showing, pursuant to 8 C.F.R. § 245a.17(a), that he:

- (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 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).

In response to a Form I-72 dated June 19, 2003, counsel submitted a photocopied certificate of achievement dated August 21, 2003 from the Dallas Independent School District, which indicated the applicant had successfully completed 40 hours of English as a Second Language (ESL).

While the applicant submitted documentation reflecting his participation in an ESL course prior to his second interview, this document failed to indicate that the course of study contains the requisite "citizenship skills" component specified in 8 C.F.R. § 245a.17(3).

On April 19, 2004, the director issued a Notice of Intent to Deny, which advised the applicant of his failure to pass the English literacy and United States history and government tests. The applicant was given the opportunity to submit evidence that would overcome the basis for denial of his application. The applicant, however, did not respond to this notice.

On appeal, the applicant asserts that he submitted a response to the Notice of Intent to Deny and provides a photocopied PS Form 3817 postmarked August 18, 2004 from the United States Postal Service which was addressed to Dallas District Officer at [REDACTED]. The record, however, does not contain any evidence that the applicant submitted a response and the applicant did not provide copies of the documents that may have been submitted.

The applicant has not provided any documentation confirming that he was attending "a state recognized, accredited learning institution," which has course of study is equivalent to one academic year and a course content that includes any instruction on United States history and government as required by 8 C.F.R. § 245a.17(3). In addition, 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. Assuming, arguendo, the applicant did submit evidence of enrollment in a citizenship course,

¹ The applicant's examination taken on January 24, 2003, which reflects that he passed the reading portion of the test.

in response to the Notice of Intent to Deny, he still would not qualify for the benefit being sought as the documentation was presented subsequent to his interview.

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 the English language and 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.

Finally, the record reflects that on July 22, 1988, the applicant was arrested by the Rockville Police Department in Maryland for shoplifting under \$50.00. On July 16, 2002, the applicant entered *nolle prosequi* for this offense in docket no. [REDACTED]. This conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

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