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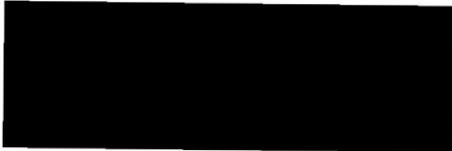
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FILE: [REDACTED] Office: DALLAS Date: OCT 01 2007
MSC 02 050 60747

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:



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 (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 the applicant did in fact submit a response to the Notice of Intent to Deny. Counsel contends although the applicant did not pass the English literacy and civics tests, he complied with requirements of 8 C.F.R. § 245a.17 by enrolling in and attending a course at an accredited institution in the United States. Counsel claims because the applicant submitted a timely response to the Notice of Intent to Deny, he has overcome the grounds for denial of his LIFE application.

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 46 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 November 18, 2003, and again on June 25, 2004. On the 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 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).

At the time of the applicant's second interview on June 25, 2004, he presented a letter dated April 23, 2004, from ██████████ an English as a Second Language (ESL) advisor of Mountain View College in Dallas, Texas. ██████████ asserted the applicant was currently enrolled in a 50-hour English course commencing May 24, 2004 and will be attending a six-hour citizenship basic course on May 15, 2004. The applicant submitted a certificate dated May 15, 2004 from Mountain View College indicating he had successfully completed the requirements of citizenship basics along with a registration summary from Dallas County Community College District reflecting the applicant's enrollment in citizenship basics and ESL courses commencing May 15, 2004 and May 24, 2004, respectively.

It is noted that attached to Mr. ██████████ letter is a handwritten post-it note date-stamped June 25, 2004, which indicates, "[p]er ██████████ has not attended not attending as of this date." It appears that this notation is referencing the applicant's enrollment in the ESL course as evidence has been presented indicating the applicant had successfully completed a 6-hour citizenship basics course on May 15, 2004. As the applicant has not demonstrated that he had attended or was satisfactorily pursuing a course of study to achieve an understanding of English, he has not met the requirement of 8 C.F.R. § 245a.17(a)(3).

In response to a Notice of Intent to Deny issued on July 6, 2004, counsel submitted a registration summary from the Dallas Independent School District, indicating that on July 17, 2004, the applicant had enrolled in an ESL course which commenced July 31, 2004. Counsel also submitted an additional letter dated July 22, 2004 from ██████████, who indicated the applicant was currently enrolled in a 50-hour ESL course commencing July 31, 2004, and that the applicant had completed a basic citizenship class.

On appeal, counsel argues that the director's Notice of Decision incorrectly stated that the applicant "provided no new evidence in response to the NOID." Counsel's assertion, however, is incorrect as the director, in her decision, noted that the applicant "provided no new evidence that you were attending classes at the time of your second examination."

The regulation at 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 June 25, 2004. The applicant failed to meet this requirement as the documentation from the

Dallas Independent School District and the additional letter from the applicant's interview.

presented *subsequent to*

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.

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