



U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

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[Redacted]

FILE: [Redacted]
MSC 02 060 60891

Office: NEW YORK

Date: **OCT 29 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. 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, New York, 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 has medical conditions which constitute an exception and/or waiver to the test requirements. In support of this contention, counsel submits Form N-648, Medical Certification for Disability Exception, dated March 12, 2005.

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 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. In this matter, the applicant alleges for the first time on appeal that due to a diagnosis of a learning disorder and mild mental retardation, he qualifies for a waiver under section 1104(c)(2)(E)(ii) of the LIFE Act.

The regulation at 8 C.F.R. §254a.3(b)(4)(ii)(D) provides that the basic citizenship skills requirements shall be waived for persons who, as of the date of application or the date of eligibility for permanent residence, whichever is later, are developmentally disabled as defined by 8 C.F.R. §245a.1(v). In this matter the application was on November 29, 2001 accompanied by Form I-693, Medical Examination of Aliens Seeking Adjustment of Status. This form, completed by [REDACTED] on October 22, 2001, indicated that the applicant had no apparent disease, defect, or disability.

On February 10, 2004, a notice of intent to deny (NOID) was mailed to the applicant notifying him of the basic citizenships skills requirements. The exceptions to these requirements were clearly stated, and the applicant was afforded an opportunity to respond to the notice with evidence in support of his eligibility. No new evidence was submitted. In response to the denial notice issued on February 15, 2005, counsel for the first time on appeal

alleges that the applicant is developmentally disabled and thus qualifies for a waiver. This evidence is not persuasive.

The Form N-648 submitted on appeal was completed by [REDACTED], on March 12, 2005. The form specifically indicates that [REDACTED] examined the applicant for the first time on March 9, 2005. As previously stated, the regulation at 8 C.F.R. § 245a.3(b)(4)(ii) specifically requires the applicant to demonstrate a developmental disability at the time of the application, which in this case was November 2001. Furthermore, the fact that the initial medical records of the applicant submitted with the application further demonstrate that no developmental disability was present at the time the application was filed. Therefore, the applicant is not eligible for a waiver under 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 (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).

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 "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:

- (2) He or she has a high school diploma or general education development diploma (GED) from a school in the United States . . . or
- (3) 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 (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

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 afforded two interviews in connection with his LIFE Act application, on February 10, 2004 and again on August 20, 2004. On both occasions, the applicant was unable to demonstrate an understanding of ordinary English. 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). Nor did the applicant provide evidence to demonstrate that he had attended or was attending at the time of the second interview a state recognized, accredited learning institution in the United States that provides a course of study for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) with curriculum including at least 40 hours of instruction in English and United States history and government as allowed under 8 C.F.R. § 245a.17(a)(3).

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 AAO will not disturb the director's decision that 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.