

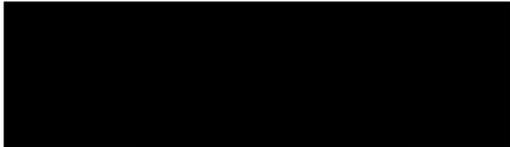
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 03 235 60958

Office: DENVER

Date: SEP 10 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: Self-represented

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, Denver, Colorado, 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: 1) failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act; and 2) had exceeded the forty-five (45) day limit for single absences during the requisite period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, the applicant asserts that he is currently enrolled in an English and civics class. The applicant asserts, “I have never left the United States for 6 months at a time. This is a mistake.”

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 48 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 February 19, 2004, and again on August 19, 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).

On December 28, 2004, the director issued a Notice of Intent to Deny, which advised the applicant of his failure to pass the English literacy and knowledge of United States history and government tests. The applicant did not submit a response to the notice.

On appeal, the applicant contends that he can now pass the basic citizenship skills test.

The applicant, however, cites no statute or regulation that compels the director to schedule the applicant for third interview. The regulation only provides *one* opportunity after the failure of the first test. 8 C.F.R. § 245a.17(b).

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.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B)(i) of the LIFE Act reads as follows:

In general – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

“Continuous residence” is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

At the time of his LIFE interview on February 19, 2004, the applicant under oath, admitted in a signed statement that between 1980 and 1988, he resided in the United States for approximately six to seven months for the sole purpose to work. The applicant asserted that he returned to Mexico every year because he had children residing in Mexico.

On December 28, 2004, the director issued a Notice of Intent to Deny, which advised the applicant of the contents of his sworn statement taken at the time of his LIFE interview. The director determined that the applicant had not continuously resided in the United States during the requisite period. The applicant was provided 30 days in which to submit sufficient evidence to establish his eligibility. The applicant, however, failed to respond to the notice.

On appeal, the applicant submits a copy of an affidavit that was previously provided. In this affidavit, the applicant asserted that in January 1981 he moved to the United States and was employed as a kitchen helper at a restaurant named [REDACTED] on [REDACTED], and he resided with his cousin, [REDACTED] who had provided an affidavit to establish his residence. The applicant asserted he departed the United States for a couple of months in 1981 and returned on December 18, 1981 as evidenced by the money order receipt in the record. The applicant asserted he resided with his cousin, [REDACTED] and obtained employment as a landscaper with [REDACTED] until December 1985. The applicant asserted, "I moved around California looking for work, and I worked and lived a few months here and there. However, my permanent address was always with my cousin, [REDACTED] on [REDACTED]." The applicant asserted in 1986 he traveled to San Martin, California and worked for a supervisor named [REDACTED] as an agricultural laborer until 1987. The applicant asserted, [REDACTED] had some houses on the edge of the fields for workers, and I lived in one of his houses while I was working in the fields." The applicant asserted in the winter of 1986 he returned to North Hollywood to work in the restaurant again and resided with his cousin, [REDACTED]. The applicant asserted he departed the United States in March 1987 for approximately ten days to Mexico to visit his family and he returned to San Martin continuing his employment with [REDACTED]. In October 1987, the applicant asserted he departed the United States for approximately two weeks as his parents were ill, and in the winter of 1987-1988, he was employed under the supervision of [REDACTED] in a restaurant named [REDACTED]. In April 1988, the applicant asserted he was employed by an individual named John, in his greenhouses, and resided in a trailer provided by [REDACTED].

The applicant's statement on appeal, has been considered; however, he has not provided any credible evidence to support his claims of employment, as listed on his Form I-687 application, with Mothers Restaurant and with [REDACTED]. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, the applicant did not claim any employment in agriculture, at a restaurant named Saul or with individual named [REDACTED] on his Form I-687 application.

The evidence submitted does not establish with reasonable probability that the applicant was residing in continuously unlawful status from before January 1, 1982 through May 4, 1988. This fact is a strong indication that the applicant was outside the United States beyond the period of time allowed by regulation and diminishes his credibility. In addition, the AAO concludes his absences were not due to any "emergent reason."

The applicant has, therefore, failed to establish that he resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and by the regulations, 8 C.F.R. §§ 245a.11(b) and 245a.15(c)(1). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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