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U.S. Citizenship  
and Immigration  
Services

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FILE: MSC 02 233 60915

Office: LAS VEGAS, NV

Date: APR 02 2008

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. If your appeal was dismissed or rejected, all documents have been forwarded to the Citizenship and Immigration Services National Records Center. 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. If your appeal was sustained, or if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

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 (director), Las Vegas, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action and consideration.

The director denied the application because the applicant had twice failed examinations meant to establish that he had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel indicated that the applicant had submitted evidence to demonstrate that he was enrolled in an accredited program following the requisite course of study consisting of classes in English and the history and government of the United States, and as such he is exempt from the English and U.S. history and government examinations administered by Citizenship and Immigration Services (CIS). Counsel also asserted that the CIS officer who interviewed the applicant did not administer the English and U.S. government and history tests appropriately.

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding 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 who are developmentally disabled. *See also* 8 C.F.R. § 245a.17(c).

An applicant may establish that he or she has met the requirements of section 312(a) of the Immigration and Nationality Act (Act) by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. *See* 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 and 312.2.

An applicant may also establish that he or she has met the requirements of section 312(a) of the Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2).

Finally, an applicant may establish that he or she has met the requirements of section 312(a) of the Act by providing evidence that he or she has attended or is attending a state recognized, accredited learning institution in the United States, following a course of study which spans one academic year and that includes 40 hours of instruction in English and United States history and government. The applicant may provide documentation of such on the letterhead stationery of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3).

The applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after 6 months: to pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit evidence that he or she has attended or is attending a state-recognized, accredited learning institution in the United States, following a course of study which spans an academic year and that includes 40 hours of instruction in English and United States history and government. *See* 8 C.F.R. § 245a.17(b).

On May 21, 2002, the applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On November 3, 2003, the applicant was interviewed in connection with his LIFE Act application. He failed to demonstrate a minimal understanding of ordinary English during the examination portion of the interview. He also failed the U.S. history and civics test administered by CIS.<sup>1</sup>

On May 12, 2004, at the final LIFE legalization interview, the applicant again failed to demonstrate a minimal understanding of ordinary English.

On January 23, 2006, the director issued a Notice of Intent to Deny (NOID) in which he indicated that he intended to deny the application because the applicant had failed to demonstrate a basic understanding of English and U.S. history and government. *See* section 1104(c)(2)(E)(i) of the LIFE Act.

On March 7, 2006, the director denied the application based on the reasons set out in the NOID.

On appeal, counsel indicated that subsequent to the November 3, 2004 LIFE legalization interview, the applicant began work in a requisite course of study, including English and U.S. history and government instruction, and as such is exempt from the English and U.S. history examinations which CIS officers administer to LIFE legalization applicants.

The AAO notes that in the record is a letter dated May 11, 2004 on Clark County School District Desert Rose Adult High School letterhead stationery. The letter confirms that the applicant began attending Desert Rose Adult High School in November 2003. However, even if the applicant did present this letter at the May 12, 2004 LIFE legalization interview, it is not sufficient on its own to establish that the applicant has attended or is attending a state-recognized, accredited learning institution in the United States, following a course of study which spans an academic year and that includes 40 hours of instruction in English and United States history and government because the letter states only that the applicant had begun attending this adult high school. *See* 8 C.F.R. § 245a.17(b). This letter does include a request from the school's site administrator that she be contacted if additional information was needed regarding the applicant and his studies. Thus, the CIS officer could have contacted this administrator for information as to whether the applicant's coursework met the regulatory requirements. However, the officer was not under an obligation to do so. Rather, the burden is on the applicant to provide evidence that meet the regulatory requirements. Moreover, the record also includes a second letter on Clark County School District Desert Rose Adult High School letterhead stationery dated March 28, 2006 which specifies that the applicant was not enrolled at the time of the May 12, 2004 LIFE legalization interview in a

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<sup>1</sup> The record indicates that at the applicant's initial LIFE legalization interview, which occurred on May 19, 2003, the CIS officer did not test the applicant's English skills and knowledge of U.S. history and government.

program that spanned an entire academic year. Rather, he was enrolled only from December 1, 2003 through June 4, 2004 according to this second letter. This letter also seems to indicate that the applicant's coursework included only English-as-a-Second-Language courses, not coursework in U.S. history and government. As such, contrary to counsel's assertions the applicant had not enrolled in the requisite course of study by the time of the May 12, 2004 LIFE legalization interview, as is required by the regulations.

The regulations provide that the applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after 6 months: to pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit evidence that he or she has attended or is attending a state-recognized, accredited learning institution in the United States, following a course of study which spans an academic year and that includes 40 hours of instruction in English and United States history and government. *See* 8 C.F.R. § 245a.17(b).

Counsel also suggested that during the examination portion of the interview the CIS officer failed to select U.S. government and history questions in a random manner as is typically done, and that he instead asked consecutive questions from the CIS list of U.S. government and history questions. The AAO notes that there is no legal requirement that CIS officers select questions at random as opposed to questions listed consecutively on the list of acceptable questions. Counsel also suggested that the CIS officer did not ask 10 questions as required but that he instead asked nine questions at the second LIFE legalization interview. The AAO finds that the record establishes that the applicant was asked ten U.S. history and government questions at both the November 3, 2003 and May 12, 2004 interviews.<sup>2</sup>

Counsel indicated as well that the applicant passed the reading portion of the English exam by correctly reading a sentence in English, but that the officer incorrectly failed the applicant on this portion of the test. This office can find nothing in the record to establish that counsel's claim is accurate. Moreover, the AAO would note that even if the applicant had been able to successfully read a sentence in English, the director still would have found that the applicant had twice failed examinations meant to establish that he had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act. That is, the applicant must pass all three prongs of this test to meet this requirement, and the applicant had not passed the U.S. history and government examination.

Finally, counsel suggested that at the November 3, 2003 LIFE legalization interview, the CIS officer informed the applicant that, if he enrolled in the appropriate course, he would not be required to take any English or U.S. government and history examination at the following interview. Counsel asserted that the applicant did not prepare for the May 12, 2004 examination because he had relied on the CIS officer's statement that enrolling in the appropriate course would waive any exam requirement. Counsel suggested that because of this, the May 12, 2004 failing examination results should not be held against the applicant. These assertions are not persuasive.

First, the analysis above established that the applicant had not enrolled in the requisite course which, for example, includes both English and U.S. history and government coursework and spans an academic year. As such, the CIS officer was required by regulation to administer examinations in basic English and U.S. government and history at the May 12, 2004 interview. *See* 8 C.F.R. § 245a.17(b). Further, if the applicant had complied with

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<sup>2</sup> The AAO also notes incidentally that the applicant had answered so many questions incorrectly prior to being asked the tenth and final question on May 12, 2004 that even if he had responded correctly to the final question he would have failed that portion of the examination.

regulatory requirements, if he had enrolled in the requisite course and had presented appropriate evidence of that prior to or during the May 12, 2004 LIFE legalization interview, it is true that the applicant would not have had to take the examinations in basic English and U.S. history and government at that interview.

The record establishes that the applicant did not pass the basic citizenship skills examination at the November 3, 2003 and the May 12, 2004 LIFE legalization interviews.

Further, the regulations specify that to fulfill the LIFE Act requirements relating to a minimal understanding of English and an understanding of U.S. history and government by attending certain state-accredited programs, the applicant must enroll in the program and provide documentation of having done so to CIS prior to or during the second LIFE interview. *See* 8 C.F.R. § 245a.17(b). The record establishes that the applicant failed to enroll in a course of study that met the regulatory requirements described at 8 C.F.R. § 245a.17(a)(3) prior to the May 12, 2004 final LIFE legalization interview, nor did he provide evidence of such prior to or during that interview.

The regulations also state that to fulfill the LIFE Act requirements relating to basic citizenship skills an applicant may provide his or her high school diploma or GED from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2). The applicant has not provided a high school diploma or GED from a school in the United States.

The applicant is not 65 years old or older and is not developmentally disabled. Thus, he does not qualify for either of the exceptions listed in section 1104(c)(2)(E)(ii) of the LIFE Act.

The applicant has failed to demonstrate that he has met the basic citizenship skills requirement as described at 1104(c)(2)(E) of the LIFE Act. Thus, he is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act.

The AAO would emphasize, however, that where the director finds the applicant ineligible for permanent resident status under section 1104 of the LIFE Act, the director must then consider the applicant's eligibility for adjustment of status to that of a temporary resident pursuant to the regulation at 8 C.F.R. § 245a.6, which provides, in pertinent part:

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director *shall* consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A).

(Emphasis added).

This office would note that when applying for temporary resident status under the *Immigration Reform and Control Act of 1986*, the applicant was not required to demonstrate a basic knowledge of English and U.S. history and government. It is only after such applicant has qualified as a temporary resident and is attempting to adjust to *permanent* resident status that he or she must fulfill requirements relating to English and U.S. history and government. *See* 8 C.F.R. § 245a.3(b)(4)(i)(A).

Also, in the record of proceedings are documents which indicate that the applicant's previous representative has admitted to and been convicted of assisting in preparing fraudulent applications for legalization. The record does not indicate, nor does this office suggest that this information influenced the director's decision to

deny the application on March 7, 2006. The AAO would merely add the following statements. Each application is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, [CIS] is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). The record of proceeding in this instance consists of the material in the applicant's A-file. See 8 C.F.R. § 103.8(d). Further, if the decision will be adverse to the applicant and is based on derogatory information considered by [CIS] of which the applicant is unaware, he shall be advised of this and offered an opportunity to rebut the information and present evidence in his own behalf before the decision is rendered. See 8 C.F.R. § 103.2(b)(16)(i). The applicant's A-file does not contain specific information or evidence to indicate that the instant application is fraudulent or that it relates to other applications that are known to be fraudulent which were prepared by the applicant's previous representative, nor does it include evidence that the applicant was ever provided notice of any such derogatory information.

Finally, the applicant acknowledged on the Form I-485 that he had been arrested previously. The Federal Bureau of Investigation (FBI) rap sheet in the record indicates that on July 7, 2002, the Las Vegas Metropolitan Police Department charged the applicant with driving under the influence of alcohol and of operating a vehicle with an open container of alcohol. The director asked that the applicant provide final court dispositions or police records relating to any arrests. The applicant provided certified copies from the Las Vegas Metropolitan Police Department that appear to indicate that on February 4, 2003, the charge of open alcohol container in one's vehicle filed against the applicant on July 7, 2002 was dismissed, and the charge of driving under the influence of alcohol/liquor was modified to a charge of reckless driving for which the applicant was made to pay a \$500 fine and to receive counseling. The police records also appear to indicate that the applicant was convicted of jaywalking on November 16, 2000 and made to pay a \$500 fine. The AAO requests that the applicant submit into the record for the director the final dispositions of any court proceedings in which he has served as defendant *that have been certified by the relevant court*. That is, the police records alone are not sufficient in that they do not include the specific final court disposition. If the relevant court no longer has records of these proceedings, the applicant should request that the court provide documentation of that, also as a certified court copy.

The matter is remanded that the director might determine whether the applicant is eligible for temporary resident status pursuant to the regulation at 8 C.F.R. § 245a.6.

**ORDER:** The director's decision denying the LIFE Act application is affirmed. The application is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the applicant, is to be certified to the AAO for review.