

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE:



Office: NEW YORK

Date:

AUG 12 2008

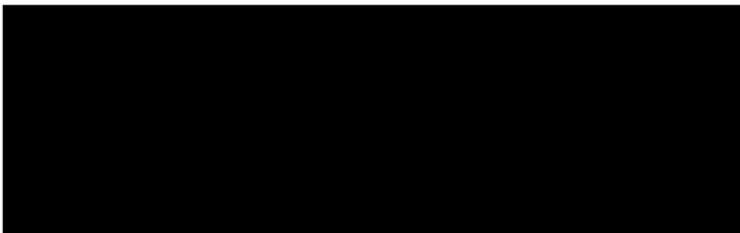
MSC 03 221 60457

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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 remanded for further action, 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) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application because the applicant 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 enrolled in an English language class prior to his second examination on basic citizenship skills, that he enrolled in additional classes after he failed his second examination, that his English is now much improved, and that his application for LIFE legalization should either be approved by the AAO or remanded to the district office for another examination of the applicant’s basic citizenship skills.

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 [Secretary of Homeland Security]) 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 Secretary of Homeland Security 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 – 312.3.

An applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE 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). The high school or GED diploma may be submitted either at the time of filing the Form I-485 LIFE Act application, subsequent to filing the application but prior to the interview, or at the time of the interview. *Id.*

Finally, an applicant may establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by establishing that:

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. The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution 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 applicant's name and A-number must appear on any such evidence submitted).

8 C.F.R. § 245a.17(a)(3).

An 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 six months (or earlier at the request of the applicant) to pass the required tests or to submit the evidence described above. *See* 8 C.F.R. § 245a.17(b).

On May 9, 2003 the applicant, a native of Ecuador, filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On May 6, 2004 the applicant was interviewed for LIFE legalization. He failed to demonstrate a basic understanding of ordinary English and a basic knowledge of U.S. history and government during the examination portion of the interview.

At his second interview for LIFE legalization, on November 19, 2004, the applicant again failed the examination of his basic English literacy and knowledge of U.S. history and government.

On May 13, 2005 the director denied the application on the ground that the applicant had not satisfied the basic citizenship skills requirement for LIFE legalization.

The applicant filed a timely appeal, which was treated by the director as a motion to reopen or reconsider, due to its imprecise language, and dismissed on August 31, 2006. The matter was subsequently forwarded to the Administrative Appeals Office (AAO), which will now consider the appeal on the merits.

On appeal counsel asserts that the applicant's enrollment in an English language class prior to his second examination on basic citizenship skills in 2004, and his subsequent enrollment in citizenship preparation classes and additional ESL classes in 2006 and 2007, satisfies the basic citizenship skills requirement set forth at 8 C.F.R. § 245a.17(a)(3). In counsel's view the

application for LIFE legalization should either be approved by the AAO or remanded to the district office for another examination of the applicant's basic citizenship skills. The AAO does not agree.

In his initial letter of appeal to the district office, dated June 9, 2005, the applicant stated that he had "enrolled in an English and citizenship course on June 7, 2004." It is unclear from the record whether the applicant supplemented his appeal letter with any documentary evidence of his enrollment in this course. In July 2007 counsel did submit evidence in the form of a photocopied letter, dated June 9, 2005, from [REDACTED], self-identified as the academic coordinator of the New York Language Center, who certified that the applicant had begun taking English as a Second Language (ESL) classes on June 7, 2004, and had advanced since then from BASIC Level 1 through Level 2 to Level 3, which he was currently attending on Sundays.

The letter from the New York Language Center does not comport with the requirements of 8 C.F.R. § 245a.17(a)(3). The letter states only that the applicant was enrolled in English language classes and had progressed to a higher class level, without indicating that the classes comprised a course of study encompassing one academic year and 40 hours or more of instruction, or that the classes included a U.S. history and government component. The letter does not identify the New York Language Center as a state recognized, accredited learning institution, and does not show the applicant's A-number. Most importantly, the letter is dated June 9, 2005, which was more than six months after the interview at which the applicant failed his second examination of basic citizenship skills. Thus, even if the letter from [REDACTED] was submitted to the district office with the applicant's initial appeal letter in June 2005, it was not submitted at the time of his second interview on November 19, 2004, which was the latest date allowed in the regulation.¹

The other documentation submitted in support of the appeal includes:

- A photocopied letter from [REDACTED], representing the Reference and Adult Services Department of the Patchogue-Medford Library, dated April 16, 2007, stating that the applicant had been attending "citizenship preparation" classes at the library since September 2006 every Wednesday from 7:00 p.m. to 9:00 p.m.

A statement from [REDACTED], Program Administrator of the Adult Center at Central Islip of the Eastern Suffolk BOCES, dated March 30, 2007, verifying that the applicant was currently attending ESL classes on Tuesday and Thursday evenings in a 76-hour course of study that ran from January 10 to June 8, 2007; and a Certificate of Merit awarded to the applicant by [REDACTED] BOCES in May 2007 for attending 78 hours of instruction in "intermediate-advanced English" at ESL level 3.

¹ The AAO also notes that while the letter's final sentence states that further information could be obtained by calling the telephone number indicated at the bottom of the page, no such phone number appears on the photocopied letter submitted to the AAO.

The foregoing documents from the Patchogue-Medford Public Library and Eastern Suffolk BOCES also fail to comport with various requirements of 8 C.F.R. § 245a.17(a)(3). The most important of these is the fact that the documents, and the courses of study they document for the applicant, postdate the applicant's second examination of basic citizenship skills by two years or more. Since the applicant was not attending any classes at the Patchogue-Medford Public Library or Eastern Suffolk BOCES at the time of his second interview on November 19, 2004, these classes are irrelevant to his eligibility for legalization under the LIFE Act.

Thus, the applicant has not satisfied the basic citizenship skills for LIFE legalization under any of the three options set forth in the regulations. He did not pass either of his examinations of basic English language ability and knowledge of U.S. history and government, as required under 8 C.F.R. § 245a.17(a)(1). He did not provide a high school diploma or GED from a school in the United States, as required under 8 C.F.R. § 245a.17(a)(2). Nor did the applicant show at the time of his second interview, on November 19, 2004, that he had attended, or was 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, as required under 8 C.F.R. § 245a.17(a)(3).

The applicant is not 65 years old or older and there is no evidence in the record that he is developmentally disabled. Thus, the applicant 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. Accordingly, he is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed, and the application denied.

The AAO notes that the applicant was arrested in Arlington, Virginia, on December 2, 2000, and charged with the manufacture, sale, or possession of a fictitious operator's license. In any future proceedings before U.S. Citizenship and Immigration Services the applicant must submit a certified court record of the final disposition of that case.

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