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U.S. Citizenship
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FILE: [REDACTED]
MSC-02-164-61956

Office: NEW YORK

Date: **AUG 21 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he satisfied the basic citizenship skills requirement under section 1104(c)(2)(E) of the LIFE Act. The director provided the applicant two opportunities to pass the English literacy and the United States history and government tests. The applicant failed to pass the tests or submit relevant evidence as described in the regulations at 8 C.F.R. § 245a.17.

On appeal, the applicant asserts that since the denial of his application, he hired a teacher to help him with his English and he has been studying very hard to learn United States history and government. The applicant states that if he is given another chance he is confident he will pass the test.

Under section 1104(c)(2)(E)(i) of the LIFE Act (“Basic Citizenship Skills”), an applicant for permanent resident status must demonstrate that he:

- (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 is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does he satisfy the “basic citizenship skills” requirement under 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), 8 U.S.C. § 1423(a). According to section 312(a) of the Act, an applicant must demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States. The record shows that the applicant twice failed to pass the English literacy and the United States history and government tests administered by Citizenship and Immigration Services (CIS).

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. In order to satisfy the basic

citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act, an applicant must show that he has a high school diploma or general education development diploma from a school in the United States, or, he has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. 8 C.F.R. § 245a.17(a)(2),(3). 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. 8 C.F.R. § 245a.17(a)(3). The record reveals that the applicant has not submitted any evidence to show that he has satisfied the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act.

On July 9, 2007, the district director issued a denial notice to the applicant. The director stated that on February 23, 2004, the applicant did not pass the test of his knowledge of United States history and government and the ability to read and write English. The director noted that pursuant to 8 C.F.R. § 245a.20(a)(2), the applicant was notified of the intent to deny his application on July 7, 2004 and was scheduled for a re-examination. The director noted that the applicant was afforded a period of six months from the date of the first interview to prepare for a second and final opportunity to pass the examination. The director stated that on September 17, 2004, the applicant was given a second and final test of his English ability and/or knowledge of United States history and government pursuant to 8 C.F.R. § 245a.17(b). The director determined that the applicant did not succeed in passing this examination and denied the application.

On appeal, the applicant asserts that since the denial of his application, he hired a teacher to help him with his English and he has been studying very hard to learn United States history and government. The applicant states that if he is given another chance he is confident he will pass the test. However, the regulations do not allow applicants to satisfy the basic citizenship requirement after the denial of their application for adjustment of status.

The regulation at 8 C.F.R. § 245a.17(b) provides:

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.

The record shows that, pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE Act application. The applicant was first interviewed on February 23, 2004 and did not pass the test of his knowledge of United States history and government and the ability to read and write English. The applicant was given another English literacy and United States history and government test on September 17, 2004 and failed to pass this second test. Additionally, the record

shows that the applicant failed to produce any documentation to establish that he has a high school diploma or general education development diploma from a school in the United States, or, he has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance.¹ *See* 8 C.F.R. § 245a.17(a)(2),(3). Therefore, the applicant has failed to satisfy the basic citizenship requirement of section 1104(c)(2)(E) of the LIFE Act.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. *See* 8 C.F.R. § 245a.12(e). The applicant has failed to meet this burden.

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

¹ It should be noted that applicants must submit such documentation “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” 8 C.F.R. § 245a.17(a)(2),(3).