

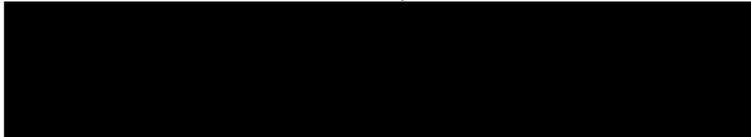


U.S. Citizenship
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FILE:

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Office: HOUSTON

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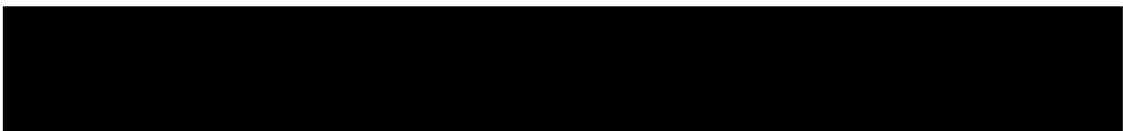
FEB 11 2008

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. 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 "D. King".

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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded.

The district 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 submits a photocopy of a Certificate of Completion of ESL I – English Residency (4.0 CEU’s) awarded the applicant by the Houston Community College System on August 16, 2002. Counsel asserts that the applicant attempted to submit the certificate with the Houston District Office, but was told that it had not yet approved any courses for completing the 40-hour alternative to the English requirement under 8 C.F.R. § 245a.17(a)(3). Counsel also contends that the applicant is “exempt from the English and History requirement.”

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).

The regulations at 8 C.F.R. §§ 245a.12(d)(10), and 245a.17(a)(2) and (3) specify that applicants may 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....”

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 stationary of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3).

On April 1, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE Act application, on January 9, 2003, and again on September 29, 2004. On both occasions, the applicant failed to demonstrate a minimal understanding of ordinary English and knowledge of civics and history of the United States.

The applicant was neither 65 years of age nor developmentally disabled at the time of filing his Form I-485, subsequent to filing the application but prior to his interviews, or at the time of his interviews. Therefore, he is not eligible for a waiver of all or part of the above requirements under the provisions of 8 C.F.R. § 245a.17(c).

On January 29, 2005, the district director denied the application. However, the director failed to issue a Notice of Intent to Deny as required by the regulation at 8 C.F.R. § 245a.20(a)(2).

The regulation at 8 C.F.R. § 245a.20(a)(2) requires that when an adverse decision is proposed, an applicant for LIFE legalization must be notified of the intention to deny the application and the basis for the proposed denial, and granted a period of 30 days to respond to this notice.

The record contains the original Certificate of Completion from Houston Community College dated August 16, 2002, reflecting the applicant's successful completion of a course in ESL I – English Residency. Contrary to counsel's assertion on appeal, the certificate was admitted into the record at the time of the applicant's first interview on January 9, 2003. The certificate states that the applicant completed "4.0 CEU's." However, the certificate does not indicate that the course of study was for a period of one academic year (or the equivalent thereof according to the standards of the learning institution).

Nevertheless, because the applicant was not provided notice of the director's intent to deny his application on this basis, followed by a 30-day period in which the applicant was granted the opportunity to respond to this notice, the case must be remanded for issuance of a new decision. If the director determines that the application should be denied, the director shall issue a Notice of

Intent to Deny containing a detailed statement of the basis for the proposed denial, and the applicant must be granted a period of 30 days to respond to this notice.

It is further noted that 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. The pertinent statutory provisions read as follows:

Section 1104(c)(2)(B)(i). 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 unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if 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.

The applicant’s Form I-687 reflects that he has been out of the United States for 420 days, which exceeds the 180 day aggregate, discussed above. Each visit was a 2-month stay, which also exceeds 45 days on each single absence. The director should address these, and any other issues regarding the applicant’s eligibility for Adjustment of Status under the LIFE Act, in the issuance of a new decision.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is remanded for further action and consideration pursuant to the above.