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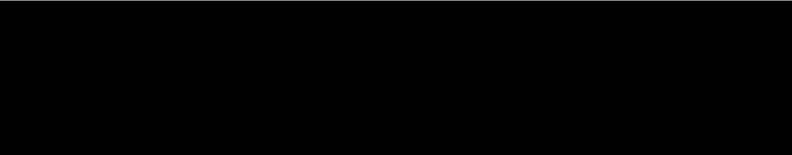
FILE: [REDACTED]
MSC-02-250-64538

Office: NEW YORK Date: FEB 20 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. 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.

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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she determined that the applicant did not succeed in her second attempt to pass the United States history exam.

On appeal, the applicant provided documentation of having received a serious head injury, including photographs of herself and a copy of her relevant medical records. Prior counsel argued that the applicant qualified for an exception to the United States history requirement on this basis. Since filing the appeal, the applicant has provided supplementary evidence that current counsel indicates had been unavailable, including Form N-648 Medical Certification for Disability Exceptions.

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 pertinent regulation regarding applicants to be granted an exception to the basic citizenship skills requirement and those circumstances under which the Attorney General could consider a waiver of such requirement is contained at 8 C.F.R. § 245a.17(c) and states the following:

Exceptions. LIFE Legalization applicants are exempt from the requirements listed under paragraph (a)(1) of this section if he or she has qualified for the same exceptions as those listed for naturalization applicants under §§ 312.1(b)(3) and 312.2(b) of this chapter. Further, at the discretion of the Attorney General, the requirements listed under paragraph (a) of this section may be waived if the LIFE Legalization applicant:

- (1) Is 65 years of age or older on the date of filing; or
- (2) Is developmentally disabled as defined under 8 C. F. R. § 245a.1(v).

The record shows that the applicant was born on July 31, 1968, and that her LIFE Act application was filed on June 7, 2002. Therefore, the applicant is not eligible to the discretionary waiver described at both section 1104(c)(2)(E)(ii) of the LIFE Act and 8 C.F.R. § 245a.17(c)(1), as she was only 33 years of age on the date her LIFE Act application was filed. It must now be determined whether the applicant is qualified for either an exception under 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b) on the basis of a physical or mental impairment, or a discretionary waiver under 8 C. F. R. § 245a.1(v) on the basis of a developmental disability.

Physical or mental impairment

The first issue to be addressed is whether the applicant has established that she qualifies for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable physical or mental impairment.

The regulation at 8 C.F.R. § 312.1(b)(3) states, in pertinent part:

The [basic citizenship skills requirement] shall not apply to any person who is unable, because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language For purposes of this paragraph, the term medically determinable means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency as outlined in paragraph (c) of this section.

The [basic citizenship skills requirement] shall not apply to any person who is unable to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States because of a medically determinable physical or mental impairment, that already has or is expected to last at least 12 months For the purposes of this paragraph, the term medically determinable means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual to be unable to demonstrate the knowledge required by this section or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications.

The applicant has not established that she has a medically determinable impairment as defined in the pertinent regulations. On appeal, the applicant submitted a Form N-648 prepared by neurologist [REDACTED]

which states that the applicant suffers from post-concussion syndrome including poor recall and attention, and depression. [REDACTED] indicated that the applicant's impairment has affected her functioning to such a degree that she is unable to learn and/or demonstrate knowledge of United States history and civics, even in a language she understands. [REDACTED] also indicated that the applicant's impairment has lasted or he expects it to last 12 months or longer, and that the applicant's impairment is not the direct effect of the illegal use of drugs. [REDACTED] indicated that his most recent examination of the applicant occurred on August 30, 2006, the date on which [REDACTED] completed the Form N-648, and that this was his first examination of the applicant. [REDACTED] failed to include test reports to substantiate his diagnosis.

The applicant also provided medical documentation dated April 25, 2003 and May 2, 2003, indicating that the applicant received an injury to her forehead on approximately April 23, 2003. The documents indicate the applicant received an injury when she was struck by a bowling ball when she was at a store. The applicant also provided photocopies of photos of her forehead, indicating she had received an injury to her forehead. In an undated statement entitled, "Motion to Reopen," the applicant's prior attorney argued that the applicant's injury from the bowling ball resulted in a head injury and short-term memory loss. [REDACTED] indicated the applicant failed to inform him of her memory difficulties until after she received the director's decision. The applicant's failure to raise the issue of her memory loss until after her application for permanent residence was denied, rather than raising this issue prior to completing the test of knowledge of United States history and government, casts doubt on the applicant's claim that a mental impairment prevented her from demonstrating her understanding of United States history and government.

The record contains a Form I-693 Medical Examination, signed by [REDACTED] on March 2, 2004, which indicates the examining physician found "no apparent defect, disease or disability." The list of possible defect, diseases or disability conditions printed on the form includes mental defect and mental retardation. [REDACTED] failed to indicate the applicant has either a mental defect or mental retardation. The applicant has not reconciled the two disparate medical evaluations contained in her record. One physician diagnosed the applicant with a mental impairments, whereas another found none. In addition, the applicant's alleged qualification for an exception to the United States history and government requirements based on a mental impairment stems from her injury occurring on approximately April 23, 2003. This claim is inconsistent with the Form I-693, which indicates that the applicant lacked any apparent defect, disease or disability on February 25, 2004. This inconsistency casts additional doubt on the applicant's claim that a mental impairment prevented her from demonstrating her understanding of United States history and government. The applicant has not established that she is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable physical or mental impairment.

Developmentally disabled

The next issue to address is whether the applicant has established that she is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable developmental disability.

The regulation at 8 C. F. R. § 245a.1(v) states:

The term developmental disability means a severe, chronic disability of a person which:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
- (5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

The applicant's mental impairment allegedly originated with an injury occurring on approximately April 23, 2003, when the applicant was approximately 34 years old. Since a qualifying disability must be manifested before the applicant attains age 22, and the applicant's disability originated when she was 34 years old, the applicant's disability does not qualify as a developmental disability. Therefore, the applicant has not established that she qualifies for exception to the Basic Citizenship Skills requirements on the basis of a medically determinable developmental disability.

For the reasons stated above, it cannot be concluded that the applicant suffers from a physical or mental disability or impairment that would allow her to be considered developmentally disabled so as to qualify for the exceptions contained at 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b). As the applicant has failed to establish that she is developmentally disabled, she is not eligible for a discretionary waiver under 8 C. F. R. § 245a.1(v).

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 she satisfy the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because she does not meet the requirements of section 312(a) of the Immigration and Nationality Act (INA). An applicant can demonstrate that she meets the requirements of section 312(a) 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).

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. The “citizenship skills” requirement of the section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States 8 C.F.R. § 245a.17(a)(2), or

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 8 C.F.R. § 245a.17(a)(3).

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must 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”

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

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with her LIFE Act application, on March 9, 2004, and again on October 15, 2004. On the first occasion, the applicant failed the United States history, reading, and writing portions of the exam. On the second occasion, the applicant did not succeed in passing the United States history portion of the exam. The applicant does not dispute this on appeal. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). The applicant also failed to establish that she has a high school diploma or a GED from a United States school, and therefore she does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(a)(2).

In a May 26, 2005, Notice of Decision, the director denied the application because she determined that the applicant did not succeed in her second attempt to pass the United States history exam.

On appeal, the applicant provided documentation of having received a serious head injury, including photographs of herself and a copy of her relevant medical records. Prior counsel argued that the applicant qualified for an exception to the United States history requirement on this basis. Since filing the appeal, the applicant has provided supplementary evidence that current counsel indicates had been unavailable, including Form N-648 Medical Certification for Disability Exceptions. This evidence has been found to be inconsistent with the Form I-693 Medical Examination contained in the record.

For the reasons discussed above, the applicant does not satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) of the LIFE Act because she has failed to demonstrate that she “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.”

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 her two interviews she did not demonstrate a 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.

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