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U.S. Citizenship
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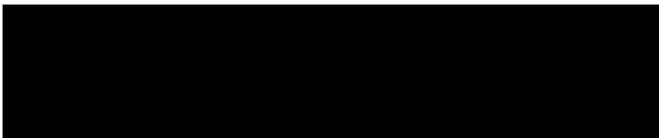
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IN RE: Applicant:



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 Newark, New Jersey. 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 (1) satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act, and (2) resided continuously in the United States from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the applicant failed the civics test due to his nervousness and not a lack of knowledge, and requests another opportunity for the applicant to redo the test. Counsel further asserts that the affiants who submitted affidavits on the applicant’s behalf, attesting to his residence in the United States, had little command of the English language and were unable to provide comprehensive affidavits, but that what they did submit was credible and relevant.

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).

The applicant a native of India who claims to have resided in the United States since 1981, filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act (Form I-485) on October 16, 2001.

On November 5, 2002, 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 and third interviews for LIFE legalization, on May 5, 2003, and December 2, 2005, respectively, the applicant again failed to pass a test of ordinary English language and basic knowledge of United States history and government.

On February 17, 2006, the director issued a Notice of Decision denying the application on the ground that the applicant had failed the examination of his "basic citizenship skills" twice (actually three times) and was therefore ineligible for permanent resident status under the LIFE Act. The director also denied the application because the applicant failed to submit sufficient credible evidence to establish that he resided continuously in the United States from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the applicant was nervous during the basic citizenship test, and could pass it if given another chance. Nervousness is not a valid ground for appeal.

The applicant has not satisfied the basic citizenship skills for LIFE legalization under any of the three options set forth in the regulations. On three separate occasions he failed to pass examinations of his 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 May 5, 2003 (or his third interview on December 2, 2005), 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.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must also establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

On appeal counsel asserts that the affidavit evidence submitted by the applicant - which is the only evidence he has produced of his residence in the United States during the 1980s - is sufficient to establish his continuous United States residence during the requisite period for LIFE legalization. The AAO does not agree, and concurs with the director's decision that the affidavits do not contain enough probative information to demonstrate the applicant's continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under Section 1104(c)(2)(E)(i) of the LIFE Act. On this ground as well, therefore, the applicant has failed to establish his eligibility for legalization under the LIFE Act.

For the reasons discussed above, the appeal will be dismissed, and the application denied.

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