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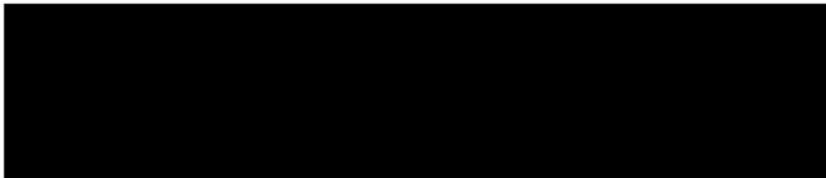
Date: JUN 18 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Dallas, 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/or 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, counsel for the applicant asserts that the applicant does, in fact, possess a basic understanding of English and of the history and government of the United States. Counsel asserts that the applicant is currently attending classes at a state-recognized, accredited learning institution in the United States and that the Dallas Independent School District certifies such attendance. Counsel submits a letter certifying that the applicant is attending an English Literacy class offered through the Adult Basic Education Program of the Dallas Independent School District.

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 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 of 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). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act 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:

- (1) He or she has complied with the same requirements as those listed for naturalization applicants . . . ; or,
- (2) He or she has a high school diploma or general education development diploma (GED) . . . ; or,
- (3) 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. . . .”

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.

The record reflects that, pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE Act application, on April 22, 2004, and November 7, 2005.

On November 22, 2005, the district director sent the applicant a Notice of Intent to Deny (NOID), stating that on both occasions, the applicant failed to demonstrate a minimal understanding of ordinary

English and a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. The applicant did not respond to the NOID.

On March 14, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, counsel asserts that the applicant does, in fact, possess a basic understanding of English and of the history and government of the United States, and qualifies for the language and civics requirement exception under 8 C.F.R. § 245a.17(3). Counsel asserts that the applicant is currently attending classes at a state-recognized, accredited learning institution in the United States. Counsel submits a letter certifying that the applicant is attending an English Literacy class offered through the Adult Basic Education Program of the Dallas Independent School District.

Counsel submits certification, dated December 16, 2005, on letterhead stationery from [REDACTED] Director of the Adult Basic Education Program of the Dallas Independent School District, indicating that the applicant was enrolled in an English Literacy/Civics class offered through the Adult Basic Education Program of the Dallas Independent School District. Mr. [REDACTED] certifies that the ABE verifies attendance in the class through formal attendance procedures. Mr. [REDACTED] certifies that the class is offered year-round and is the equivalent of one year of study. He certifies that on July 12, 2004, the applicant enrolled in the class and had attended this class for a total of 49.5 hours.

This falls short of the requirement under 8 C.F.R. § 245a.17(a)(3) and 8 C.F.R. § 245a.17(b). The record reflects that at the time of his second interview, on November 7, 2005, the applicant had completed a total of 42 hours of relevant coursework. However, he did not submit certification of this course of study until after the second interview, when he appealed the director's decision to deny his application. This requirement is a mandatory time frame and clearly stated in the regulation at 8 C.F.R. § 245a.17(a)(3). Thus, the applicant has failed to satisfy the basic citizenship skills requirement. Accordingly, the director's decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act will be affirmed.

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 or she 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. The applicant has failed to meet this burden.

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