

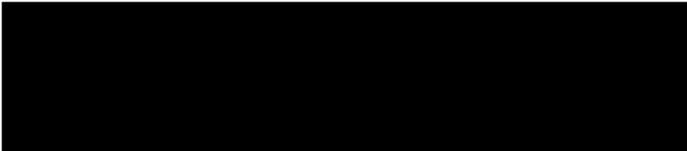
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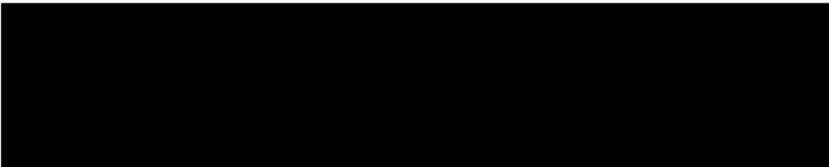
Date: **MAR 03 2008**

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.

A handwritten signature in black ink, appearing to read "D. King" or similar, written over a circular stamp.

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

The director denied the application because the applicant had failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel for the applicant asserts that Citizenship and Immigration Services (CIS) failed to provide any evidence to support the conclusion that the applicant did not meet the requirement of English knowledge. Counsel contends that the AAO, in an unpublished decision, held that a denial cannot be based on the unsupported conclusion of an administrative officer. Counsel attaches a copy of the unpublished decision. Counsel further claims it is an abuse of discretion and a violation of the applicant's due process rights to deny the applicant's application based on nothing more than an officer's unsupported, unsubstantiated opinion.

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 does not claim to be 65 years old or developmentally disabled; thus, 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 "speaking 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 "by 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 his LIFE Act application, on August 10, 2004, and again on March 11, 2005. On both occasions, the applicant failed to demonstrate a minimal understanding of ordinary English. The record contains a copy of the LIFE Legalization Citizenship Test administered August 10, 2004, wherein the applicant was unable to answer any basic questions regarding United States history and government, was unable to write any words in English, and was unable to read three basic sentences. The applicant signed a copy of the test. The record also contains a copy of the Life Legalization Citizenship Test administered March 11, 2005, wherein the applicant was unable to answer or answered incorrectly eight out of ten basic questions regarding the history and government of the United States. The test also contains six words provided as an English writing sample, but the words are indecipherable. Further, the graded test indicates the applicant was unable to read three simple English sentences. 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 does not have a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(a)(2).

On March 11, 2005, the applicant was notified that he had not passed the second and final test of English ability and knowledge of U.S. history and government. Pursuant to the regulation at 8 C.F.R. § 245a.17(b)

the denial of the application for permanent residence may be based solely on the failure to pass the basic citizenship skills requirements.

Neither the applicant nor counsel has provided any evidence or argument on appeal that the applicant met the basic citizenship skills requirement at the first or second interview. Moreover, neither the applicant nor counsel contend that the applicant is 65 years old or developmentally disabled or has satisfied the basic citizenship skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act.

The AAO acknowledges counsel's submission of an unpublished decision. However, counsel has not furnished any evidence to establish that the facts of this application are analogous to those in the unpublished decision. Further, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the application at hand. The applicant has not demonstrated any error by the director in conducting the review of the application. As discussed above, the applicant has not satisfied the basic citizenship skills requirement to establish eligibility, thus, the denial was the proper result under the regulation. Accordingly, the applicant's due process claim is without merit.

The applicant in this matter 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 AAO will not disturb the director's decision that 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.