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U.S. Citizenship
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FILE:

[REDACTED]

Office: PHOENIX

Date:

MAY 02 2008

MSC 02 247 66181

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:

[REDACTED]

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 Phoenix, Arizona. 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 satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal counsel asserts that the applicant completed over 40 hours of English language instruction and continues to take English language courses in fulfillment of his basic citizenship skills requirement for LIFE legalization.

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).

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

The 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 6 months: to pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit 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 an academic year and that includes 40 hours of instruction in English and United States history and government. *See* 8 C.F.R. § 245a.17(b).

On June 4, 2002 the applicant, a native of Mexico, filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On February 26, 2003, the applicant was interviewed in connection with his LIFE Act application. 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 interview on May 11, 2004, the applicant again failed the examination of his basic English literacy and knowledge of U.S. history and government. At the interview the applicant presented a letter from the GED Testing Manager of the Arizona Department of Education, dated March 29, 2004, requesting a six-month extension for the applicant to attend GED preparation classes at Central Arizona College to be able to take the English-language GED test.

On June 28, 2006 the director issued a Notice of Intent to Deny (NOID), citing the two failed examinations and the lack of evidence that the applicant had completed or was pursuing an appropriate course of study at the time of her second interview. The applicant was given 30 days to submit additional evidence.

In response to the NOID the applicant stated that his work hours made it difficult to attend the ESL (English as a second language) course he wanted to take, and that he was trying to improve his English language ability on his own. The applicant submitted some photocopied school records showing that he was enrolled in courses at Central Arizona College in 1992, 1993, and 2005 totaling 18 credits, 6 of which were in English and citizenship, and that he was enrolled in another 6 credits of English language courses at South Mountain Community College (Phoenix, Arizona) in 1995. The foregoing courses totaled just 24 credit hours, however, and the school records show that the only course the applicant completed was a six-hour nursing assistant course in the fall of 2005 – a year and a half after he failed his second examination of basic citizenship skills. Thus, the applicant's courses did not meet the 40-hour requirement in English and United States history and government, as prescribed in 8 C.F.R. § 245a.17(b).

On August 29, 2006, the director denied the application for failure of the applicant to satisfy the basic citizenship skills required for LIFE legalization, in accordance with the criteria of 8 C.F.R. § 245a.17(a)(1) or 8 C.F.R. § 245a.17(a)(3).

On appeal counsel asserts that the applicant has attended courses well beyond the 40-hour requirement set forth in the regulations and that he has gained sufficient knowledge of the English language to satisfy the basic citizenship skills for LIFE legalization. In support of the appeal counsel resubmits copies of the school records already in the file.

Counsel's argument is meritless. As previously discussed, the applicant enrolled in far less than the minimum 40 hours of instruction in English and United States history and government required to meet the basic citizenship skills for LIFE legalization under 8 C.F.R. § 245a.17(a)(3). Moreover, the school records on file indicate that the applicant did not successfully complete any of his English language and citizenship courses.

Thus, the applicant has not satisfied the "basic citizenship skills" for LIFE legalization under any of the three options set forth in the regulations. He did not pass either of his examinations of basic English language ability and knowledge of U.S. history and government, as required under 8 C.F.R. § 245a.17(a)(1). He has not provided 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 has he shown that he attended, or was attending at the time of his second interview in 2004, 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 to adjust to permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed, and the application denied.

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