

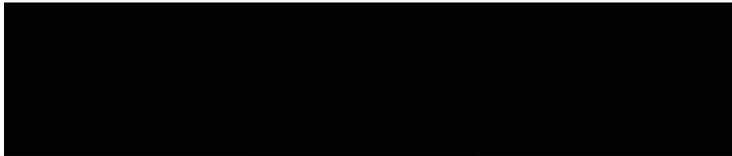
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FILE: [Redacted]  
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Office: NEW YORK

Date: **MAY 05 2008**

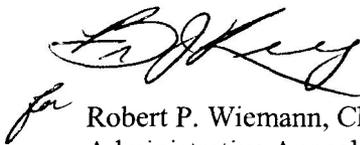
IN RE: Applicant: [Redacted]

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: Self-represented

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.

  
for 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 New York City. 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, the applicant asserts that he has a learning disability which excuses him from the “basic citizenship skills” requirement of the LIFE Act.

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.

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).

The applicant, a native of Ecuador, filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act on June 8, 2003.

On May 19, 2004, the applicant was interviewed in connection with his application for LIFE legalization. He failed to demonstrate a basic understanding of English and a basic knowledge of U.S. history and government during the examination portion of the interview. On that same date, therefore, the director issued a notice of intent to deny (NOID). The applicant was advised of his failure to pass the basic citizenship skills examination and notified that he would have a final re-examination on January 7, 2005.

At his second examination, on January 7, 2005, the applicant again failed the basic citizenship skills requirements for LIFE legalization.

On April 2, 2006, the director denied the application for the reasons stated in the NOID.

On appeal the applicant does not contest that he failed on both of his examinations to demonstrate a basic understanding of English and a basic knowledge of U.S. history and government, as prescribed in 8 C.F.R. § 245a.17(a)(1) to meet the basic citizenship skills requirement for LIFE legalization. Nor has the applicant satisfied the basic citizenship skills requirement under the other two alternatives established in the regulations. 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), and he did not provide any evidence at the time of his second examination that he took, or was taking, a one-year course of study that included 40 hours of instruction in the English language and U.S. government and history at a state recognized, accredited learning institution, as required under 8 C.F.R. § 245a.17(a)(3).

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the basic citizenship skills requirements for aliens who are at least 65 years of age or who are developmentally disabled. The pertinent regulation, at 8 C.F.R. § 245a.17(c), reads as follows:

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 [physical or mental impairment]. 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 applicant states that he was born on December 28, 1954. Therefore, the applicant is not eligible for the discretionary waiver for 65-year olds described at section 1104(c)(2)(E)(ii) of the LIFE Act and 8 C.F.R. § 245a.17(c)(1), as he was only 48 years of age on the date his application for LIFE legalization was filed in 2003.

It must now be determined whether the applicant is eligible for an exemption from the basic citizenship skills requirements under 8 C.F.R. § 245a.17(c) due to a physical or mental impairment as described in 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b), or a discretionary waiver under 8 C.F.R. § 245a.17(c)(2) due to a developmental disability as described in 8 C.F.R. § 245a.1(v).

Physical or mental impairment

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

The requirements of [basic citizenship skills] 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 regulation at 8 C.F.R. § 312.2(b) states, in pertinent part:

The requirements of [basic citizenship skills] 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.

On appeal, the applicant asserts that he has a learning disability which prevented him from passing the basic citizenship skills test. As evidence thereof he has submitted a Form N-648, Medical Certification for Disability Exceptions, from [REDACTED] dated January 27, 2005. Dr. [REDACTED] whose business stamp reads "Diplomate, American Board of Psychiatry," stated on the Form N-648 that he first met the applicant on December 20, 2004, and last examined him on January 27, 2005. On the basis of that examination [REDACTED] indicated that the applicant had an impairment that affected his ability to learn and/or demonstrate knowledge, that the impairment had lasted or was expected to last 12 months or longer, and that the impairment was not the direct effect of the illegal use of drugs. [REDACTED] diagnosed the applicant as "suffering from learning disorders (reading, math, and written expression) since his school years," and stated that "[t]hese disorders affected his cognitive functions." He went on to provide the following details:

[The applicant]'s reading achievement is substantially below that expected. His attention is limited, concentration and memory are defective. He is unable to recall recent information. Therefore, he has been unable to learn basic English language and/or history and civics to pass U.S. citizenship tests.

[REDACTED] did not include any test results or other medical data to substantiate his diagnosis. He did not describe how he conducted his examination and how he arrived at his conclusions. While acknowledging that he had known the applicant for barely over a month at the time of the examination and completion of the Form N-648, [REDACTED] gave his "diagnosis" a historical perspective by stating that the applicant has had learning disorders affecting his cognitive functions "since his school years" [REDACTED] did not explain what clinical or laboratory diagnostic techniques he utilized, if any, or identify any historical sources such as school reports from Ecuador and prior medical records, in reaching his diagnosis. [REDACTED]'s sweeping statement that the applicant "has a long history of learning disorders (reading, mathematics and written expression)" appears to rest on little more than the applicant's say-so.

Based on the foregoing analysis, the AAO determines that the applicant has failed to establish that he has a medically determinable mental impairment "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 . . . [and] 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," as required under 8 C.F.R. § 312.1(b)(3) and 312.2(b) to exempt him from the basic citizenship skills requirements for LIFE legalization.

Since the applicant has not established that he has a medically determinable mental (or physical) impairment as defined in the foregoing regulations, he is not eligible for an exemption from the basic citizenship skills requirements for LIFE legalization under 8 C.F.R. § 245a.17(c).

Developmentally disabled

As for the applicant's eligibility for a discretionary waiver of the basic citizenship skills requirements under 8 C.F.R. § 245a.17(c) due to a developmental disability, the regulation at 8 C.F.R. § 245a.1(v) provides the following definitional framework:

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.

As previously discussed, while [REDACTED] states in his diagnosis that the applicant has suffered from learning disorders affecting his cognitive functions "since his school years," no documentary evidence has been offered in the form of medical and school records to support this conclusion. Thus, the record does not demonstrate that the applicant's "learning disorder" manifested itself before he turned 22, as required under 8 C. F. R. § 245a.1(v)(2). Nor does the record demonstrate that the applicant's "learning disorder" has resulted in substantial functional limitations in three or more of the seven areas of major life activity listed at 8 C. F. R. § 245a.1(v)(4). As described by [REDACTED], the applicant's functional limitations touch no more than two of the major life activity areas – receptive and expressive language, and learning – listed at 8 C.F.R. § 245a.1(v)(4)(ii) and (iii). Furthermore, there is no evidence whatsoever that the applicant's "learning disorders" are of such magnitude that he needs a regime of specialized and personalized care and/or services of lifelong or extended duration, as described at 8 C. F. R. § 245a.1(v)(5).

Based on the foregoing analysis, the AAO determines that the applicant has failed to establish that he has a developmental disability, as defined at 8 C. F. R. § 245a.1(v), that would make him eligible for a waiver under 8 C.F.R. § 245a.17(c) of the basic citizenship skills requirement for LIFE legalization.

Conclusion

For the reasons discussed above, the applicant has failed to establish that he has a physical or mental impairment, as described in 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b), that would make him eligible for an exemption from the basic citizenship requirements for LIFE legalization under 8 C.F.R. § 245a.17(c), or that he has a developmental disability, as described in 8 C. F. R. § 245a.1(v), that would make him eligible for a waiver of the basic citizenship skills requirement for LIFE legalization under 8 C.F.R. § 245a.17(c).

Since the applicant failed his two examinations on basic citizenship skills, and is not eligible for a medically-based exemption or waiver, he is ineligible for permanent resident status under 1104(c)(2)(E) of the LIFE Act. Accordingly, the appeal will be dismissed, and the application denied.

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