



U.S. Citizenship
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Services

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FILE:

MSC 02 232 65514

Office: DALLAS

Date: **MAY 08 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] 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, Dallas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded.

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 contends that the applicant has submitted evidence to establish that he satisfies the “basic citizenship skills” requirement.

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 applicants who are at least 65 years of age or who are developmentally disabled. *See* 8 C.F.R. § 245a.17(c).

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 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. 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. 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 also 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. 8 C.F.R. § 245a.17(b).

The record reflects that the applicant was interviewed in connection with his LIFE Act application on March 21, 2003. The applicant failed to demonstrate a minimal understanding of ordinary English and knowledge of civics and history of the United States. The applicant does not dispute this fact on appeal. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 245a.3(b)(4)(iii)(A)(2). 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).

The applicant was schedule to be interviewed for a second time on March 29, 2004. The record reflects that on March 23, 2004, the applicant's daughter, [REDACTED], called to reschedule the interview. The record reflects that [REDACTED] stated that the applicant was having surgery on March 23, 2004.

The record reflects that on April 1, 2006, the director scheduled an appointment with the applicant for April 19, 2006, for verification of school status. The director requested that the applicant bring his photo identification and a copy of a letter showing attendance dates and completion of English and Citizenship courses. The applicant provided a March 23, 2004, declaration from [REDACTED], ESL Advisor at Mountain View College. Ms. [REDACTED] stated that the applicant was currently enrolled in English classes beginning on March 22, 2004 for 50 classroom hours. The declarant also stated that the applicant would be taking a citizenship basics class on March 27, 2004, for 6 hours. The declaration failed to state that Mountain View College is a state recognized, accredited learning institution in the United States, the course of study consisted of a period of one

academic year, and the curriculum included at least 40 hours of instruction in English and United States history and government.

In the Notice of Intent to Deny (NOID), dated April 29, 2006, the director determined that the applicant failed to meet the basic citizenship skills requirement. The director granted the applicant thirty (30) days to submit additional evidence. In rebuttal to the NOID, counsel submitted the following:

1. A March 22, 2004, registration summary from Dallas County Community College District in the applicant's name. The registration summary indicates that the applicant was enrolled in Citizenship Basics and ESL: Fundamentals of Communication. The applicant also provided a cash receipt for the classes, dated March 22, 2004. The registration summary fails to indicate the number of hours of instruction in both English and Citizenship Basics.
2. A cash receipt from Dallas County Community College District, dated on April 10, 2006.
3. An April 12, 2006, declaration by [REDACTED], specialist at Dallas Independent School District, Adult Basic Education. The declarant stated that the applicant enrolled in English as a Second Language on September 27, 2005. She also stated that the applicant has accumulated 82 hours of classroom instruction.
4. A May 11, 2006, certificate in the applicant's name from Mountain View College, Dallas County Community College District, Continuing Education and Contract Training, which indicates that the applicant successfully completed the requirements of ESL: Fundamentals for Workforce for 4.8 continuing education units.

It is noted that the above evidence fails to clearly indicate that Mountain View College, Dallas County Community College District, is a state recognized, accredited learning institution. The evidence fails to clearly indicate that the applicant's course of study is for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and that the curriculum includes at least 40 hours of instruction in both English and United States history and government as required under 8 C.F.R. § 245a.17(a)(3). The record does not contain any of the applicant's college transcripts. In order to satisfy the alternative to the basic citizenship skills requirement, such evidence would have to be submitted prior to or at the time of the applicant's second interview. 8 C.F.R. § 245a.17(a)(3).

In the July 5, 2006, Notice of Decision, the director stated that the applicant failed to demonstrate that he was attending an approved program at the time of his second opportunity to take the test, on March 29, 2004. The director denied the instant application based on the reasons stated in the NOID.

Based on the record, the AAO finds that the applicant was not given a second opportunity to take the test pursuant to 8 C.F.R. § 245a.17(b). The applicant, through his daughter, provided 6 days notice that he would be unable to attend the scheduled interview and requested the interview be rescheduled. The interview was not rescheduled. The AAO finds that the applicant should be given an opportunity to reschedule his second interview.

Accordingly, the director's decision is withdrawn and the case is remanded for rescheduling of the applicant's second interview.

ORDER: The director's decision denying the LIFE Act application is withdrawn. The application is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the applicant, is to be certified to the Administrative Appeals Office for review.