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U.S. Citizenship
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Services

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FILE: 
MSC 02 246 65986

Office: HOUSTON

Date:

MAY 21 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: 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.

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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed.

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

On appeal, the applicant asserts that her former counsel did not receive any notification of a second scheduled interview.

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).

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 her LIFE application, on June 27, 2003; however, she failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. The applicant was scheduled for a second interview on September 29, 2004; however, she failed to appear.

The record contains letters dated May 28, 2002, and June 26, 2003, from [REDACTED] executive director of Houston International University, who attested to the applicant's enrollment in English as a Second Language and Citizenship, History and Government course, which was submitted at the time of the applicant's first interview. The letter dated June 26, 2003, indicated that the applicant had completed 77 hours of instructions from May 28, 2002, through June 25, 2003.

The documentation from Houston International University, however, did not provide any confirmation that it is "a state recognized, accredited learning institution," and has a course of study for a period of one academic year as required by 8 C.F.R. § 245a.17(a)(3).

On June 27, 2003, the director issued a notice to the applicant requesting documentation from Houston International University establishing that it is a state recognized, accredited learning institution, that the course of study is equivalent to one academic year, the curriculum includes at least 40 hours of instruction in English and United States history and government. The university was also requested to provide a list of all approved courses along with a list of names who were authorized to sign certificates of completion or current attendance. The applicant was granted 120 days in which to submit the requested documentation. The applicant, however, failed to respond to the notice.

In response to a Notice of Intent to Deny issued on March 1, 2005, the applicant's former counsel indicated that his office requested that the applicant's second interview be rescheduled due to a scheduling conflict. Counsel submitted an additional letter dated March 23, 2005, from [REDACTED] of Houston International University, who indicated that the applicant had attended a 54-hour English as a Second Language and citizenship, history and government program from September 14, 2004, to December 9, 2004.

As noted by the director, in her Notice of Decision, the record contains no evidence of a timely request made by counsel for rescheduling the second interview. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, the applicant asserts that her former counsel "claimed that they did not received any notification of the date for the second scheduled interview as a result I was not notified of the appointment and I missed it." The applicant's assertion is without merit as counsel acknowledged, in response to the Notice of Intent to Deny, the applicant's scheduled second interview on September 29, 2004. The record also reflects that a

notice dated September 9, 2004, was sent to the applicant's address of record, which informed her of the second interview on September 29, 2004. The record contains no evidence that the notice was returned by the post office as undeliverable.

The regulation at 8 C.F.R. § 245a.17(a)(3) requires that the applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing the Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview. In the instant case, the applicant did not provide evidence that the organization is a state recognized, accredited learning institution until on appeal.

As previously discussed, the applicant failed to meet the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at her first interview she did not demonstrate a minimal understanding of the English language and minimal knowledge of United States history and government. The regulation only provides *one* opportunity after the failure of the first test, and the applicant failed to appear for her second scheduled interview. 8 C.F.R. § 245a.17(b). The applicant cites no statute or regulation that compels the director to schedule the applicant for a third interview.

Therefore, the applicant 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 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.