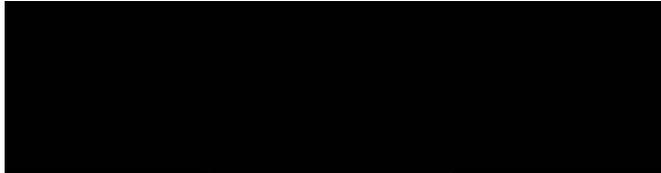


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**U.S. Citizenship
and Immigration
Services**

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FILE: [Redacted]
MSC 03 245 62250

Office: NEW YORK

Date: **MAY 23 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. 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), 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 twice failed examinations meant to establish that he had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel for the applicant submits a brief statement.

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 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).

The regulations at 8 C.F.R. §§ 245a.12(d)(10), and 245a.17(a)(2) and (3) specify that applicants may 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....”

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. *See* 8 C.F.R. § 245a.17(a)(3).

On June 2, 2003, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE Act application, on May 7, 2004, and again on November 19, 2004. On the first occasion, the applicant failed to pass the history and government and writing tests. On the second occasion, the applicant passed the history and government test, but failed to pass the writing skills portion of the interview. Therefore, the director denied the application on May 18, 2005.

On appeal, counsel states that the applicant passed his United States history and government examination by answering all ten question correctly, but that the interviewing officer failed him “for not writing something completely perfectly.” Counsel asserts that the applicant “did not understand [the interviewing officer’s] pronunciation and thus his case was denied.” Counsel concludes that the decision to deny the application should be reversed as the applicant showed fluency in English throughout the interview and should be retested.

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.

The applicant has not provided 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). Nor has the applicant provided evidence to demonstrate that he had attended or was attending at the time of his second interview on November 19, 2004, a state recognized, accredited learning institution in the United States that provides a course of study for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) with curriculum including at least 40 hours of instruction in English and United States history and government as allowed under 8 C.F.R. § 245a.17(a)(3).

The applicant also has failed to demonstrate that he satisfies 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). The applicant has not passed 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).”

Counsel’s assertion that the applicant failed to pass the writing portion of his examination on the basis that he did not understand the interviewing officer’s pronunciation is not persuasive. The applicant evidently understood the questions posed by the interviewing officer with reference to questions regarding United States history and government and successfully passed this portion of the examination. However, the record reflects that he was unable to demonstrate his ability to write words in ordinary usage in the English language during the course of the interview. *See* 8 C.F.R. §§ 245a.3(b)(4)(iii)(A)(1) and (2).

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.