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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC 02 234 60057

Office: PHOENIX

Date: MAY 29 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, Phoenix, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 complied with the citizenship skills requirements required under the LIFE Act. Counsel submits additional evidence in support of the applicant’s claim.

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).

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE Act application, on April 15, 2003, and again on February 25, 2004. On both occasions, 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).

In the Notice of Intent to Deny (NOID), dated on June 28, 2006, the director stated that the applicant presented a letter from Golden Gate Community Center at his second interview on February 25, 2004. The director determined that the letter failed to satisfy the requirements under the regulations at 8 C.F.R. § 245a.17(a)(3). Specifically, the director noted that the letter failed to indicate whether the course of study was for one academic year and whether the coursework was in both English and civics. The director afforded the applicant thirty (30) days to submit documentation to meet the eligibility requirements.

In rebuttal, the applicant submitted the same letter from Golden Gate Community Center with one additional sentence. The declarant added that the applicant would complete 36 class hours. The applicant also submitted a registration form and receipt for enrollment in a Basic English class at the David Kazan Education Center, Isaac School District No. 5. The registration form indicated that the course would begin on August 7, 2006.

In the Notice of Decision, dated on September 26, 2006, the director stated that the additional evidence was inadequate to serve as an acceptable alternative to the applicant's failure to demonstrate the required citizenship skills. The director denied the instant application based on the reasons stated in the NOID.

On appeal, counsel offers additional evidence in support of the applicant's claim. Counsel submits an October 11, 2006, declaration from [REDACTED], Director at Isaac School District No. 5, David Kazan Family Educational Center. Ms. [REDACTED] stated that the applicant had enrolled in a Basic English as a Second Language class in March 2006 and had completed 36 hours of instruction on June 2006. The declarant also stated that the applicant enrolled in a Basic English Level 1 class in August 2006 and completed 36 instructional hours during this course. Ms. [REDACTED] further stated that the applicant enrolled in a Citizenship class in August 2006 for 44 hours of instruction, and the class would end October 12, 2006.

Counsel contends that by the time the applicant received the NOID, he was attending a state recognized, accredited learning institution in the United States and completing a year-long curriculum with at least 40 hours of instruction in English and U.S. history and government. While this may be true, the above evidence must have been submitted prior to or at the second interview. This requirement is a mandatory time frame and clearly stated in the regulation at 8 C.F.R. § 245a.17(a)(3). The record reflects that the above evidence was submitted on appeal on October 27, 2006. The applicant did not submit the above evidence before or at his second interview.

The only evidence submitted before or at the second interview was the initial Golden Gate Community Center letter, which failed to include whether the course of study was for one academic year and whether the coursework was in both English and civics. Even if the second Golden Gate Community letter, which stated that the applicant completed 36 class hours, was taken into account, the letter still failed to include whether the coursework was in both English and civics. Upon review of the submitted evidence, the applicant enrolled in a Citizenship class in August 2006, approximately two years after the second interview. Thus, the applicant has failed to satisfy the basic citizenship skills requirement.

Counsel also submits an October 13, 2006, declaration from [REDACTED], manager of H&R Sales. Mr. [REDACTED] described the applicant's duties, which require the applicant to speak, read and write English on a daily basis. This declaration does not demonstrate that the applicant meets the basic citizenship skills required under section 1104(c)(2)(E) of the LIFE Act.

Based on the above discussion, 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 AAO affirms the director's decision that 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.