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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

[Redacted]

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FILE:

[Redacted]

Office: NEW YORK CITY

Date: OCT 01 2008

consolidated herein]  
MSC 01 300 60703

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:

[Redacted]

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.

*John H. Vaughan*  
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 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 counsel submitted a second Form N-648, Medical Certification for Disability Exceptions (Form N-648), completed and signed by [REDACTED]

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

The applicant, a native of Ecuador who claims to have resided in the United States since 1981, filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act (Form I-485) on July 27, 2001.

On August 12, 2004, the applicant was interviewed for LIFE legalization. He failed to demonstrate a basic understanding of ordinary English and a basic knowledge of U.S. history and government during the examination portion of the interview.

The director subsequently issued a Notice of Intent to Deny (NOID), dated August 12, 2004, noting the applicant's failure to pass the test of his basic citizenship skills and granting the applicant six months to prepare for a second and final re-examination. The director notified the applicant that failure to appear for his "final re-examination" would result in the denial of his application based solely on 8 CFR 245a.17(b). The interview and re-examination were scheduled for March 13, 2006.

On March 13, 2006, counsel submitted a Form N-648, Medical Certification for Disability Exemptions, and a medical report, which was completed and signed by ██████████, a psychotherapist, on March 4, 2006. Ms. ██████████ indicated on the Form N-648 that the applicant suffers from adjustment disorder with anxiety, that the symptoms of anxiety affect the applicant's ability to retain information for long periods of time. Ms. ██████████ added that the applicant does not read or write in English, that he is unable to retain information for long periods of time even if presented to him in Spanish.

On May 22, 2007, the applicant was notified that another appointment had been scheduled on his LIFE legalization application for June 27, 2007. On that date the director issued a Notice of

**Decision denying the application.** In the decision the director noted that when the applicant appeared and was asked to raise his right hand, he indicated to the interviewing officer that he does not understand English. The director then noted that the Form N-648 was completed by a licensed clinical social worker, not by a licensed doctor, osteopathic doctor or a clinical psychologist, as required by the regulation at 8 C.F.R. § 312.2(b)(2).

On appeal counsel submitted another Form N-648 completed and signed by [REDACTED], a psychiatrist, on July 16, 2007.

The applicant has not satisfied the basic citizenship skills for LIFE legalization as set forth in the regulations. He did not pass an examination of basic English language ability and knowledge of U.S. history and government, in accordance with 8 C.F.R. § 245a.17(a)(1). He did not provide a high school diploma or GED from a school in the United States, in accordance with 8 C.F.R. § 245a.17(a)(2). Nor did the applicant show at the time of his second interview on June 27, 2007, that he had attended, or was 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, in accordance with 8 C.F.R. § 245a.17(a)(3).

The applicant is not 65 years old or older. Thus, the applicant does not qualify for an exception under this provision.

The issue to be addressed in this case is whether the applicant has established that he qualifies for an exception to 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 under 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 [basic citizenship skills requirement] 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 [basic citizenship skills requirement] 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.

Since [REDACTED] is not an M.D. or a psychologist, as specified in the regulation at 8 C.F.R. § 312.2(b)(2), her Form N-648 does not meet the regulatory requirements and she does not qualify to make a medical judgment on whether the applicant has a physical or mental impairment.

The second Form N-648, was completed and signed by [REDACTED] a psychiatrist, dated July 16, 2007, and submitted by counsel on appeal. Dr. [REDACTED] stated that the applicant suffers from serious disabilities, including, dementia, depression, inability to concentrate and persistent headaches. Dr. [REDACTED] indicated that according to the tests administered, the applicant suffers from dementia due to head trauma (DSMIV-294.1), major depressive disorder (DSM IV-296.30), and a history of head trauma with cerebral concussion, which is severe. Dr. [REDACTED] stated that the applicant has a long history of cognitive deficit. He indicated that while the applicant was in second grade, he was brutally beaten and stopped going to school, and that in 1978 the applicant suffered from a head injury and was admitted to the hospital, and upon release from the hospital the applicant experienced residual symptoms including headaches, insomnia, and memory deficit. Dr. [REDACTED], indicated that the applicant was unable to acquire skills in reading and writing, that he has difficulties in carrying out even simple intellectual tasks, and that his score on the "Mini Mental State" examination was 19 (normal is 27-30). Dr. [REDACTED] concluded that the reduction of mental capacity due to a combination of mental and physical impairments makes it impossible for the applicant to learn and demonstrate knowledge of the English language and U.S. history and civics, but that the applicant understands the importance of becoming a U.S. citizen and is sufficiently competent to take a meaningful oath of allegiance.

The only data submitted by [REDACTED] to substantiate his diagnosis was a photocopy of "The Mini-Mental State Examination (MMSE)" in which the applicant scored 19 out of a possible 30. The examination is a one-page list of simple questions with numerals from 1 to 5 next to them indicating the maximum possible score and the applicant's actual score for each question. The

examination does not indicate what the applicant's answers were to the specific questions, does not explain the scoring system, and does not explain how [REDACTED] determined the applicant's score on each question. In view of these substantive deficiencies, the AAO concludes that the MMSE conducted by [REDACTED] is not persuasive evidence that the applicant has a mental impairment as described in the regulations. On the Form N-648 [REDACTED] indicated that his examination of the applicant on July 16, 2007 was his one and only medical visit from the applicant. [REDACTED] did not identify any other clinical or laboratory diagnostic techniques that he utilized in regard to the applicant. Nor did [REDACTED] identify any historical sources, such as prior medical records, in reaching his diagnosis. In particular, there are no medical records pertaining to the 1978 head injury and hospitalization which the applicant and [REDACTED] state was the basis of the applicant's cognitive problems.<sup>1</sup>

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 from 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 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 basic citizenship skills requirement under 8 C.F.R. § 254a.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;

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<sup>1</sup> The applicant has filed two Forms I-693, Medical Examination of Aliens Seeking Adjustment of Status, in this proceeding, which were completed and signed by the examining physician, [REDACTED], M.D., on July 19, 2001 and on March 8, 2006. On both forms the [REDACTED] indicated that he found the applicant to have "no apparent defect, disease or disability." The list of possible defects, diseases or disability conditions printed on the form includes "mental defect" and "mental retardation."

(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.

The applicant's mental impairment allegedly originated with an injury that occurred in 1978, when the applicant was approximately 28 years old. Since a qualifying disability must be manifested before the applicant attains age 22, the applicant's alleged disability would not qualify as a developmental disability even if it could be determined. Therefore, the applicant has not established that he qualifies for an exception to the Basic Citizenship Skills requirements on the basis of a medically determinable developmental disability.

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.

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 make him eligible for a waiver of the basic citizenship skills requirement for LIFE legalization under 8 C.F.R. § 245a.17(c).

For the reasons discussed above, the appeal will be dismissed, and the application denied.

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