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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 143 65045

Office: PHOENIX

Date:

OCT 02 2008

IN RE: Applicant:



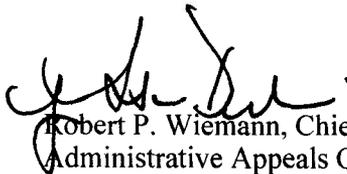
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


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, 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 she satisfied the “Basic Citizenship Skills” requirement under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel submits an affidavit from the applicant. The applicant asserts that she has made a sincere effort to learn the language and to comply with the requirements under the LIFE Act. She provides a Form N-648, Medical Certification for Disability Exceptions, and states that she suffers from a learning disability. She asserts that she suffers from severe migraine headaches which leave her totally disabled. She also provides copies of her children’s birth certificates, a copy of a medical document and previously submitted evidence.

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.

The applicant does not satisfy the Basic Citizenship Skills requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because she does not meet the requirements of section 312(a) of the Immigration and Nationality Act (INA). An applicant can demonstrate that he meets the requirements of section 312(a) by “[s]peaking and understanding English during the course of the interview for permanent resident status” and answering questions based on the subject matter of approved citizenship training materials, or “[b]y passing 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).” 8 C.F.R. § 245a.3(b)(4)(iii)(A)(1) and (2).

The regulation at 8 C.F.R. § 245a.17(b) states that:

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) and (a)(3) of this section [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)]. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with her LIFE Act application, on July 18, 2006, and again on February 5, 2007. On both occasions, the applicant failed to demonstrate a minimal understanding of ordinary English. The applicant does not dispute this on appeal. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

In the alternative, an applicant can satisfy the Basic Citizenship Skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act. The Basic Citizenship Skills requirement of the section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States 8 C.F.R. § 245a.17(a)(2), or

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 8 C.F.R. § 245a.17(a)(3).

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must 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”

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). At the first interview, the record indicates that the applicant provided a certificate of completion for 15 hours of ESOL Level 1 instruction from Friendly House Inc., dated June 23, 2004. The certificate does not establish that the organization is a state recognized, accredited learning institution, the course of study was for a period of one academic year or equivalent, or that the curriculum included at least 40 hours of instruction in both English and United States history and government as required under the regulation at 8 C.F.R. § 245a.17(a)(3).

At the second interview, the applicant submitted a declaration, dated January 31, 2007, from [REDACTED] Adult Education Coordinator at Friendly House. The declarant stated that the applicant registered for ESOL (English for Speakers of Other Languages) and Citizenship classes on September 9, 2006. The declarant further stated that the applicant completed 58 hours. This letter demonstrates that the curriculum included at least 40 hours of instruction in both English and United States history and government. However, the declarant failed to establish that the organization was a state recognized, accredited learning institution or that the course of study was for a period of one

academic year (or the equivalent thereof according to the standards of the learning institution) as required under the regulation at 8 C.F.R. § 245a.17(a)(3).

On appeal, the applicant submits an undated certificate of achievement in English classes from Gary Tang Adult Education. The certificate provides no detailed information regarding the institution, course of study or number of hours of instruction. The certificate does not establish that the organization is a state recognized, accredited learning institution, the course of study was for a period of one academic year or equivalent, or that the curriculum included at least 40 hours of instruction in both English and United States history and government as required under the regulation at 8 C.F.R. § 245a.17(a)(3). In addition, this document was not presented prior to or at the second interview as required under the regulations at 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3).

None of the above evidence meets the regulatory requirements. 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.

EXCEPTIONS

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 developmentally disabled.

The pertinent regulation regarding aliens to be granted an exception to the basic citizenship skills requirement and those circumstances under which the Attorney General could consider a waiver of such requirement is contained at 8 C.F.R. § 245a.17(c) and states the following:

Exceptions. LIFE Legalization applicants are exempt from the requirements listed under paragraph (a)(1) of this section if he or she has qualified for the same exceptions as those listed for naturalization applicants under §§ 312.1(b)(3) and 312.2(b) of this chapter. Further, at the discretion of the Attorney General, the requirements listed under paragraph (a) of this section may be waived if the LIFE Legalization applicant:

- (1) Is 65 years of age or older on the date of filing; or
- (2) Is developmentally disabled as defined under 8 C. F. R. § 245a.1(v).

The record shows that the applicant was born on March 15, 1953, and that her LIFE Act application was filed on February 20, 2002. Therefore, the applicant is not eligible to the discretionary waiver described at both section 1104(c)(2)(E)(ii) of the LIFE Act and 8 C.F.R. § 245a.17(c)(1), as she was only 48 years of age on the date her LIFE Act application was filed.

The applicant does not qualified for a waiver on the basis of a developmental disability. The regulation at 8 C.F.R. § 245a.1(v) states:

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;
- (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.

On appeal, the applicant submits a Form N-648, dated April 5, 2007, in an attempt to establish that she is developmentally disabled and eligible for an exception. The Form N-648 is signed by [REDACTED], M.A.P.C, U.S.A.C. At part 2(a) of the Form N-648, where physicians are asked to provide their clinical diagnosis of the applicant's impairment and describe the impairment, the declarant stated that the applicant suffers from general anxiety disorder, "which has caused significant distress in her life such as impairment in social situations and important areas of functioning, such as driving a vehicle or attending school."

At part 3 of the Form N-648, where physicians are asked to provide detailed information on the connection between the impairment(s) and the applicant's inability to learn and/or demonstrate knowledge of English and/or U.S. history and civics, the declarant stated that the applicant completed 6th grade, but was held back three years during elementary school due to her inability to learn, retain and memorize. The declarant stated that the applicant's intellectual functions are very limited, her memory span is short and she is unable to retain or recall objects within a five-minute time frame. The declarant concluded that the applicant's "anxiety, lack of education and intellectual skills, and poor memory significantly interfere with her ability to perform or complete any type of testing."

If we accepted the declarant's statements at face value¹, the applicant has a disability which is attributable to a mental impairment that manifested in the applicant as a young child and continues to affect the applicant. The results of the disability affect the applicant's mobility and learning. However, the applicant has not clearly established that her disability results in a third area of substantial functional limitation as required under 8 C.F.R. § 245a.1(v)(4). Furthermore, there is no evidence that the applicant's disability results in her 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

¹ The AAO notes that the record contains the results of a medical examination of the applicant in which the physician found "no apparent defect, disease or disability."

individually planned and coordinated as required under 8 C.F.R. § 245a.1(v)(5). Given the absence of these relevant details, the evidence in the record is insufficient to establish that the applicant is qualified for an exception to the Basic Citizenship Skills requirements on the basis of a developmental disability pursuant to 8 C.F.R. § 245a.17(c)(2).

It is also noted that the record contains a Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, dated November 9, 2001. The Form I-693 is signed by [REDACTED] M.D. Dr. [REDACTED] indicated that he found “no apparent defect, disease or disability.” The applicant has not reconciled these two disparate medical evaluations. One physician diagnosed the applicant with mental impairment, whereas another found none. This discrepancy raises doubts regarding the credibility of the applicant’s claim.

The applicant also submits undated progress notes from [REDACTED], M.D. The progress notes are written in Spanish and are not accompanied by an English translation. Given this, the notes cannot be given any weight as evidence of the applicant’s claimed disability.

For the reasons discussed above, 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. In addition, the applicant does not qualify for a waiver under section 1104(c)(2)(E)(ii) 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.