



U.S. Citizenship  
and Immigration  
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FILE:

[REDACTED]

Office: PHOENIX (LAS VEGAS, NV) Date:

SEP 02 2008

MSC 02 252 60705

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. The file has been returned to the office that originally decided your case. 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 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 twice failed examinations meant to establish that the applicant had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel asserts the applicant is enrolled in a qualifying English language program.

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 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).

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. The applicant may provide documentation of such on the letterhead stationary of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3).

The 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 6 months: to

pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit 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 an academic year and that includes 40 hours of instruction in English and United States history and government. *See* 8 C.F.R. § 245a.17(b).

On June 9, 2002, the applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On July 29, 2003, the applicant was interviewed in connection with his LIFE Act application. He failed to demonstrate a minimal understanding of ordinary English during the examination portion of the interview.

On June 8, 2004, the applicant again failed to demonstrate a minimal understanding of ordinary English at the second LIFE interview.

On January 20, 2006, the director issued the notice of intent to deny (NOID) in which she indicated that the applicant had failed the basic citizenship skills examination and gave the applicant 30 days to respond.

On September 15, 2006, the director denied the application based on the reasons set out in the NOID.

On appeal, counsel asserts the applicant has enrolled in an English language class and satisfies the criteria of section 312.

The record verifies that the applicant did not pass the basic citizenship skills examination on July 29, 2003 and on June 8, 2004.

The applicant submitted a letter from Clark County School District and an enrollment record indicating the applicant started taking English class in March, 2006. The AAO would note that the applicant did not enroll in any classes until after he received a NOID indicating his application would be denied for failure to demonstrate basic citizenship skills. As noted by the director an applicant must provide evidence of enrollment in a qualifying educational program for English and U.S. government prior to or during a LIFE interview. In this case it is clear the applicant did not enroll in such program until after he had failed the examinations at both interviews and was notified of impending denial over two years later. As such, the applicant has not established eligibility.

The applicant is not 65 years old or older and is not developmentally disabled. Thus, he does not qualify for either of the exceptions listed in section 1104(c)(2)(E)(ii) of the LIFE Act.

The applicant has failed to demonstrate that he has met the basic citizenship skills requirement as described at 1104(c)(2)(E) of the LIFE Act. Thus, he is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act.

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

