

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L2

FILE:

MSC 02 176 65220

Office: NEW YORK

Date: **SEP 10 2000**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** On May 13, 2005, the District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.<sup>1</sup>

The director denied the application, finding that on May 15, 2004, the applicant failed the basic citizenship skills requirement as part of his interview. He was re interviewed on October 15, 2004, and did not succeed in passing the writing portion of the exam.

On appeal, counsel for the applicant asserts that the applicant's mental disability only came to his attention after two interviews were conducted by the director. Counsel requests that the case be remanded. Counsel submits a Form N-648 and an accompanying report from [REDACTED]. Counsel asserts that the applicant has a disability that affects his short-term memory and that the applicant only has a sixth grade education in his native country.

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 requirements for aliens who are at least 65 years of age or developmentally disabled.

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.

---

<sup>1</sup> The AAO will adjudicate the applicant's Form I-687 in a separate decision.

8 C.F.R. § 245a.17 states in relevant part:

(c) 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 § 245a.1(v).

8 C.F.R. § 312.1(b)(3) states, in relevant part:

The requirements of paragraph (a) of this section 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 as noted in paragraph (a) of this section. The loss of any cognitive abilities based on the direct effects of the illegal use of drugs will not be considered in determining whether a person is unable 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.

8 C.F.R. § 312.2 states, in relevant part:

Knowledge of history and government of the United States.

(a) General. No person shall be naturalized as a citizen of the United States upon his or her own application unless that person can demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States. A person who is exempt from the literacy requirement under § 312.1(b)(1) and (2) must still satisfy this requirement.

(b) Exceptions. (1) The requirements of paragraph (a) of this section 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. The loss of any cognitive skills based on the direct effects of the illegal use of drugs will not be considered in determining whether an individual may be exempted. 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.

(2) Medical certification. All persons applying for naturalization and seeking an exception from the requirements of § 312.1(a) and paragraph (a) of this section based on the disability exceptions must submit Form N-648, Medical Certification for Disability Exceptions, to be completed by a medical or osteopathic doctor licensed to practice medicine in the United States or a clinical psychologist licensed to practice psychology in the United States (including the United States territories of Guam, Puerto Rico, and the Virgin Islands). ... These medical professionals shall be experienced in diagnosing those with physical or mental medically determinable impairments and shall be able to attest to the origin, nature, and extent of the medical condition as it relates to the disability exceptions noted under § 312.1(b)(3) and paragraph (b)(1) of this section.

8 C.F.R. § 245a.1(v) states:

(v) The term developmentally disabled means the same as the term developmental disability defined in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act of 1987, Pub. L. 100 - 146. As a convenience to the public, that definition is printed here in its entirety:

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.

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 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 GED or high school 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 6 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).

At issue in this proceeding is whether the applicant has submitted credible evidence to meet his burden establishing that he has satisfied the basic citizenship requirement or that he qualifies for an exception to that requirement. Here, the applicant has not met that burden.

The record reflects that on March 25, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status. On March 15, 2004, the applicant appeared for an interview based on his application. The applicant was re-interviewed on October 15, 2004.

The applicant does not 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 can demonstrate that he or she meets the requirements of section 312(a) of the Act 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 applicant has not satisfied the alternative of the basic citizenship skills requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Counsel asserts that the applicant qualifies for the language and civics requirement exception under 8 C.F.R. § 245a.17(3). To support his assertion, counsel cites the first sentence of that regulation: “[h]e or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance.” Counsel, however, fails to cite the rest of the regulation: “[t]he 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(3). (Emphasis added).

The applicant has not asserted nor has he established that he is developmentally disabled according to 8 C.F.R. § 245a.1(v). Therefore, we turn to whether the applicant qualifies for a waiver under 8 C.F.R. § 312.1(b)(3), i.e., whether the applicant unable to demonstrate an understanding of the English language and/or unable to demonstrate a knowledge and understanding of the fundamentals of the history 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.

In support of his claim that he qualifies for the waiver, the applicant has submitted a Form N 648, Medical Certification for Disability Exceptions, dated June 10, 2005, completed by Dr. [REDACTED] of New York, New York. On the Form N-648, [REDACTED] has checked the corresponding boxes on the form to indicate that, based on his examination of the applicant, his symptoms, previous medical records, clinical findings, or tests, the applicant has an impairment that affects his ability to learn and/or demonstrate knowledge; that the impairment lasted or is

expected to last 12 months or longer; and that the applicant's impairment was not the direct effect of the use of illegal drugs.

In one write-in portion of the form, Diagnosis of Impairments, at question 2(a) provides the following diagnosis:

"[the applicant's] short term memory is significantly impaired. He remembers virtually nothing about verbal material presented narratively. This makes it impossible for him to learn new material such as U.S. history, civics, and the English language. He has no ability to think abstractly."

Question 2(b) of the form asks the certifying physician to provide the DSM-IV codes for each mental impairment described in question 2(a). wrote the following: DSM-IV 309.28 Adjustment Disorder with Mixed Anxiety and Depressed Mood; DSM-IV 315.00 Reading Disorder; and, DSM-IV 315.2 Disorder of Written Expression. At question 3 provides the following information on the connection between the impairments and the applicant's inability to learn and/or demonstrate a knowledge and understanding of English and/or U.S. history and civics:

suffers from a serious impairment of his short term memory functioning. His long term memory is within normal limits. He is thus unable to process and retain new information, of any nature, including U.S. history, civics, and the English language sufficiently to pass examinations on these subjects.

In addition, because he has been separated from his wife and son for over 14 years, he has an adjustment disorder with mixed anxiety and depression which further interferes with his ability to learn."

At questions 4 and 5, checked the corresponding boxes to indicate that, in his professional opinion, the applicant's impairments affect his functioning to such a degree that he is unable to learn and/or demonstrate an ability to speak, read, or write English, and knowledge of U.S. history or civics, even in a language the applicant understands.

Finally, indicates that this is his first examination of the applicant and that he does not know from whom the applicant usually received medical care.

The report attached to the Form N-648 from includes a list of his credentials and a summary of the interview he conducted of the applicant. indicates that the results he describes are based upon the mental status examination.

The Form N-648 and accompanying report are insufficient to demonstrate that the applicant qualifies for a waiver under 8 C.F.R. § 312.1(b)(3). The form was revised in 2002. Explanations were added to the form by William R. Yates, Deputy Executive Associate Commissioner, Office

of Field Operations, Immigration Services Division, U.S. Department of Justice, Immigration and Naturalization Service, to stress that eligibility for the waiver is established by an inability to learn, not by a difficulty in learning. “*Memorandum For Regional Directors, District Directors, Officers-in-Charge, and Service Center Directors: Introduction of Revised N-648, Medical Certification for Disability Exceptions.*” HQISD 70/33 (June 6, 2002). The form also stresses that illiteracy in the applicant’s native language is not sufficient, by itself, to support a finding of inability to learn and/or demonstrate knowledge. *Id.*

states that he administered the “mental status examination” on the applicant, but failed to attest whether this a medically accepted test for diagnosing Reading Disorder or Disorder of Written Expression and does not indicate what, if any, medically accepted tests are used to measure these impairments. [REDACTED] concludes that the applicant’s poor short-term memory impairs him to the point where he cannot learn enough English or U.S. history to pass a citizenship test, but does not explain the origin of the applicant’s reading and writing disabilities or his anxiety and depression. Finally, [REDACTED] fails to explain how these impairments affect his short-term memory and as a result, how they prevent him from learning or demonstrating knowledge of English and/or U.S. history and government.

Thus, the applicant has failed to establish that he qualifies for the medically determinable impairment exception to the basic citizenship skills requirement, as defined under regulations pertinent to LIFE legalization. *See* 8 C.F.R. §§ 245a.17(c), 312.1(b)(3) and 312.2(b).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The applicant has failed to meet this burden.

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