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U.S. Citizenship
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[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date:

SEP 15 2008

MSC 02 124 60920

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 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 District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The director denied the application because the applicant had failed to establish that he satisfied the "Basic Citizenship Skills" requirement under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel submits a Form N-648, Medical Certification for Disability Exceptions, in the applicant's name. Counsel contends that the applicant suffers from a disability which makes him eligible for a waiver of the basic citizenship skills requirement.

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 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 his LIFE Act application, on April 21, 2005, and again on September 13, 2007. At the first interview, the record reflects that the applicant correctly answered seven out of ten U.S. history and government questions. The record reflects that the applicant made several spelling errors on the writing portion of the interview. The record also reflects that the applicant failed to pass the reading portion of the interview. The applicant issued a Notice of Intent to Deny, dated April 21, 2005. The director stated that the applicant had failed the first interview and would be granted six months to prepare for a second and final re-examination.

At the second interview, on September 13, 2007, the record reflects that the applicant passed the writing and reading portion of the interview, but correctly answered only four out of ten U.S. history

and government questions. The district adjudications officer indicated that the applicant failed the interview based on his knowledge of U.S. history and government.

Upon thorough review of the record, the AAO concludes that the applicant does satisfy the Basic Citizenship Skills requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does 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 applicant successfully passed the U.S. history and government portion at his first interview and the writing and reading portions at his second interview.

As a result, the issue of whether the applicant is qualified for either an exception under 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b) on the basis of a physical or mental impairment, or a discretionary waiver under 8 C.F.R. § 245a.1(v) on the basis of a developmental disability need not be addressed.

For the reasons stated above, the applicant does satisfy the basic citizenship skills requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the director’s decision is withdrawn, and the case will be remanded for a further determination as to the applicant’s eligibility for permanent resident status under section 1104 of the LIFE Act. The new decision, if adverse to the applicant, shall be certified to this office for review.

ORDER: The director’s decision is withdrawn. This matter is remanded for further action and consideration pursuant to the above.