

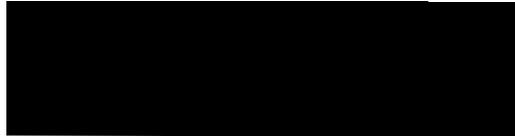
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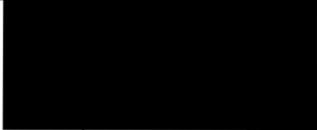
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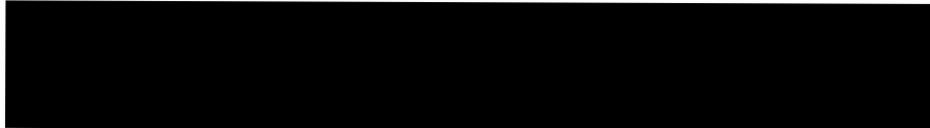


Office: HOUSTON

Date: **SEP 18 2008**

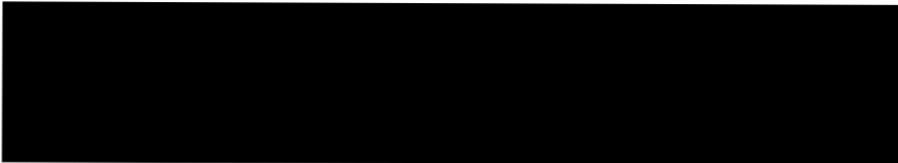
MSC 01 360 60164

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. 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.

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 (director) in Houston, Texas. 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 asserts that the director neglected to issue a Notice of Intent to Deny, in accordance with regulations, before denying the application, and that the applicant fulfilled the basic citizenship skills requirement by presenting evidence that he completed two English as a Second Language (ESL) courses at his second interview for LIFE legalization.

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).

On September 25, 2001 the applicant, a native of Mexico, filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On January 27, 2004 the applicant was interviewed for LIFE legalization at the Houston District Office, and failed to demonstrate a basic understanding of ordinary English and a basic knowledge of U.S. history and government. That same day the district office issued a notice to the applicant that he would be given another opportunity after six months to be tested on his English language ability and his knowledge of U.S. government and history.

At his second interview for LIFE legalization, on October 20, 2004, the applicant again failed the examination of his basic English literacy and knowledge of U.S. history and government.

On October 29, 2004 the director denied the application on the ground that the applicant had not satisfied the basic citizenship skills requirement for LIFE legalization. In the Notice of Denial the director provided the following specific explanation to the applicant: "On January 27, 2004, and again on October 20, 2004, you were unable to demonstrate your understanding of English in that the Service officer was unable to place you under oath to conduct the interview."

The applicant appeals on two grounds. The first ground, counsel indicates, is that the director did not follow proper procedure because he failed to issue a Notice of Intent to Deny (NOID) prior to the denial of the application and thereby prevented the applicant from presenting timely evidence of his eligibility for LIFE legalization. According to counsel, the director was required

to issue a NOID by the regulation at 8 C.F.R. § 245a.20(a), which would have given the applicant 30 days to submit evidence that he satisfied the basic citizenship skills requirement for LIFE legalization. While 8 C.F.R. § 245a.20(a) is a regulation of general applicability in LIFE Act cases, the regulation at 8 C.F.R. § 245a.17 provides the specific procedures applicable to the citizenship skills requirement for LIFE legalization. The director followed that regulation by advising the applicant in the notice dated January 27, 2004 – following his failure to demonstrate a basic understanding of English and U.S. history and government at his initial interview for LIFE legalization – that he would be granted another opportunity to be tested after six months had passed and that he should “[s]ubmit all requested documents” at the scheduled interview. When the applicant was scheduled for a second interview on October 20, 2004, therefore, he had the opportunity to present evidence of his enrollment in and completion of ESL courses in fulfillment of the basic citizenship skills requirement for LIFE legalization. Accordingly, the AAO concludes that the director adhered to proper procedure in adjudicating this application.

The second ground of appeal is that the applicant did, in fact, present documentary evidence at his second interview, on October 20, 2004, that he had completed two ESL courses, both of more than 40 hours. Counsel submits photocopies of two “Certificates of Completion” awarded to the applicant by the Houston Community College System, on June 12, 2004 and July 29, 2004, for satisfactory completion of “Special Topics in Communication ESL 1 (RDDS 1000), 48 Contact Hours – 4.8 CEU’s.” Counsel contends that each of these courses, by itself, satisfied the applicant’s basic citizenship requirement in accordance with 8 C.F.R. § 245a.17(a)(3). The record does not confirm, however, that either of these certificates was actually “presented” by the applicant at his second interview, as claimed by counsel. If such were the case, copies of the certificates should have been in the file as of October 20, 2004, and been mentioned in the director’s decision of October 29, 2004, not submitted for the first time in support of the appeal on November 24, 2004. Counsel has not explained what happened at the second interview in any detail. While asserting vaguely that the applicant “presented” the certificates at that interview, counsel does not say how they were handled by the interviewing officer, whether the certificates were left at the district office, or whether the applicant returned home with them. What is clear is that the certificates did not become part of the record until they were submitted with the appeal. Based on the foregoing analysis, the AAO concludes that the applicant has failed to establish that he submitted the certificates at the time of his second interview, as required under 8 C.F.R. § 245a.17(a)(3).¹

Thus, the applicant has not satisfied the basic citizenship skills for LIFE legalization under any of the three options set forth in the regulations. He did not pass either of his examinations of basic English language ability and knowledge of U.S. history and government, as required under 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, as required under 8 C.F.R. § 245a.17(a)(2). Nor did the applicant show at the time of his second interview, on October 20, 2004, that he had attended, or was attending, a state recognized,

¹ The AAO also notes that the Certificates of Completion do not indicate that the ESL courses completed by the applicant included any U.S. history and government component, and they do not include the applicant’s A-number, as required by the regulation.

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, as required under 8 C.F.R. § 245a.17(a)(3).

The applicant is not 65 years old or older and there is no evidence in the record that he is developmentally disabled. Thus, the applicant 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. Accordingly, he is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed, and the application denied.²

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

² The record shows that the applicant was arrested in Brownsville, Texas, on November 17, 1994, charged with presenting a fraudulent Resident Alien Card to gain entry into the United States, in violation of 8 U.S.C. § 1325, was found guilty and sentenced by a U.S. Magistrate Judge to six months imprisonment, "S/S 3 yrs.," and voluntarily returned to Mexico. This conviction must be taken into consideration in any future proceedings before U.S. Citizenship and Immigration Services.