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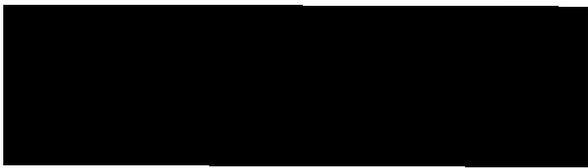
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date: APR 20 2009

MSC 02 017 63343

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.

John F. Grissom
Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director in New York City. 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 the applicant asserts that when he arrived for his second examination no officer was available to test him, that he was told he would be rescheduled, but that he was never rescheduled for a second examination of his basic citizenship skills.

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 October 17, 2001 the applicant, a native of Senegal, filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On February 25, 2004 the applicant was interviewed for LIFE legalization. He failed to demonstrate a basic understanding of ordinary English and a basic knowledge of U.S. history and government during the examination portion of the interview.

On the same date the director issued a Notice of Intent to Deny, scheduling the applicant for a second examination of his basic citizenship skills on August 27, 2004.

On August 21, 2007 the director denied the application on the ground that the applicant failed to appear for the second examination of his basic citizenship skills, citing the regulation at 8 C.F.R. § 312.5(b) which provides that an applicant who "fails to appear without good cause for that second examination without prior notification to the Service . . . will be deemed to have failed this second examination." Accordingly, the applicant did not satisfy the basic citizenship skills requirement for LIFE legalization.

The applicant filed a timely appeal and submitted a statement that he arrived on time for his second examination, but was told that the examining officer was unavailable, that he should sign his name and go, and that the examination would be rescheduled, which never happened. The applicant has submitted no evidence to corroborate his story. USCIS records do not back the applicant's version of the events on August 27, 2004. There is no documentation or other indication in the applicant's file that he appeared for the second examination of his basic citizenship skills that was scheduled for August 27, 2004.

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 scheduled 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 scheduled interview that he had attended, or was 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, 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.

Beyond the decision of the director, the AAO notes that the applicant has not established his continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. The only evidence of the applicant's residence in the United States during that time period are a series of affidavits and notarized letters from three individuals who claim to have resided with or otherwise known the applicant in the United States during the 1980s.¹ These documents are thin on details, however, with minimalist and/or fill-in-the-blank formats that provide little information about the applicant, his life in the United States, and his interaction with the authors during the 1980s. None of the authors has provided any evidence – such as photographs, letters, or other documentation – showing that they had a personal relationship with the applicant in the United States during the 1980s. Moreover, only one of the authors claims to have known the applicant as early as 1981; the others make no mention of knowing the applicant before 1987. Thus, the affidavits and notarized letters all lack evidentiary weight. They fail to demonstrate the applicant's continuous residence in the United States during the years 1981 to 1988. Finally, on a Form G-325A (Biographic Information) he filed in September 1992, the applicant identified his last address outside the United States of more than one year as [REDACTED], D'Ourbel, Senegal, from 1960 (his birth year) until January 1990.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec.

¹ There is also an envelope addressed to the applicant in New York City that may have a 1987 postmark, but the year is unclear and the envelope does not identify any address for the applicant except for a post office box.

582, 591-92, (BIA 1988). Furthermore, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

Since the applicant has not established his continuous unlawful residence in the United States during the requisite period for LIFE legalization, the application must also be denied on this ground.

For the reasons discussed above, the appeal will be dismissed and the application denied.

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