



U.S. Citizenship
and Immigration
Services

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FILE:

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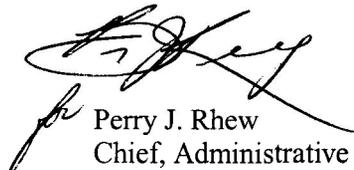
IN RE: Applicant:

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.


Perry J. Rhew
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 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 she satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal the applicant asserts that she has been doing her best to learn and requested another opportunity to retake the test.

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).

The applicant, a native of Mexico who claims to have resided in the United States since March 1981, filed her Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act, on February 19, 2002.

On October 23, 2002, the applicant was interviewed for LIFE legalization. She 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. The applicant was given 6 months to prepare for her second and final interview. The applicant was scheduled for a second and final interview on June 9, 2003.

At her second interview for LIFE legalization, on June 9, 2003, the applicant failed the test of her ordinary English language ability and basic knowledge of United States history and government for the second and final time. At the interview, the applicant submitted a photocopy of Certificate of Completion in English as a Second Language Studies (ESL) from North Harris College Adult Education Program, dated December 4, 2002.

On the same date the director issued a request for additional evidence from North Harris College, Adult Education Program requesting that the applicant furnish proof of enrollment in or completion of attendance at the school that is in compliance with 8 CFR 245A.17(3). In response to the request, the applicant submitted a letter of enrollment from an ESL Instructor dated July 8, 2003, stating that the applicant was enrolled in an ESL/Pre-GED class offered through the Community Education Department of North Harris College for Fall 2002.

On September 3, 2003, the director issued a Notice of Intent to Deny (NOID) indicating that the document submitted by the applicant in response to the request for evidence was insufficient to

satisfy the regulatory requirement at 8 C.F.R. § 245a.17(a)(3). The applicant was granted 30 days to submit additional evidence.

The applicant responded and submitted the following documents from North Harris College:

- A letter from [REDACTED], dated September 11, 2003, indicating that the college is an accredited institution to offer courses that is satisfactory of the basic citizenship skills requirement.
- A letter from [REDACTED] North Harris College Adult Education Program, dated September 11, 2003, indicating that the applicant was enrolled in the ESL program at the school.
Copies of unsigned Student Registration Form for Fall 2003 semester, and student outcome sheets for Fall 2002 and Spring 2003 semesters.

On October 24, 2003, the director issued a Notice of Denial denying the application on the ground that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal the applicant asserts that she has been doing her best to learn and requested another opportunity to retake the test.

The applicant has not satisfied the basic citizenship skills requirement for LIFE legalization as set forth in the regulations. She did not pass an examination of basic English language ability and knowledge of U.S. history and government, in accordance with 8 C.F.R. § 245a.17(a)(1). She did not provide a high school diploma or GED from a school in the United States, in accordance with 8 C.F.R. § 245a.17(a)(2). Nor did the applicant establish at the time of her second interview on June 9, 2003, that she 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, in accordance with 8 C.F.R. § 245a.17(a)(3).

The documents submitted by the applicant from North Harris College do not comport with the regulatory requirements as set forth at 8 C.F.R. § 245a.17(a)(3). While the letter from [REDACTED] Adult Education Center, clearly shows that North Harris College is an accredited institution, the letter from [REDACTED] shows that the applicant did not complete her studies as required to qualify for an exemption. In the letter, [REDACTED], states [REDACTED] first enrolled in the Fall 2003 semester in an English as a Second Language (ESL) Class in the North Harris College Adult Education Program. She has been attending classes since October 29, 2002. She has made satisfactory progress. . . I recommend that she continue to attend classes so that she can reach the desired level of proficiency required by your agency.” The record reflects that the applicant was enrolled in an ESL/Pre-GED class offered through the Community Education Department of North Harris College, but as [REDACTED] letter indicates above, the applicant did not enroll in English as a Second Language at the college until Fall of 2003. The statement from [REDACTED]

clearly shows that the applicant did not complete a course of study which spans one academic year and that includes 40 hours of instruction in English and United States history and government, in accordance with 8 C.F.R. § 245a.17(a)(3).

The photocopied Certificate of Completion in English as a Second Language from North Harris Community College dated December 4, 2002, which the applicant submitted does not appear to be genuine. The Certificate bears a completion date of December 4, 2002, however, the letter from at North Harris Community college clearly states that the applicant first enrolled in ESL in the Fall 2003 semester. Therefore, it is implausible that the applicant would have completed the course before enrollment. The contradiction in the record calls into question the credibility and reliability of the Certificate of Completion submitted by the applicant as evidence that she has satisfied the requirements at 8 C.F.R. § 245a.17(a)(3).

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.* Thus, the applicant does not satisfy either alternative of the basic citizenship skills requirement set forth under 8 C.F.R. § 245a.17(a)(3).

The applicant did not submit the required certification before or at her second interview, which is a mandatory timeframe and clearly stated in the regulation at 8 C.F.R. § 245a.17(a)(3). Thus, the applicant has failed to satisfy the basic citizenship skills requirement.

The applicant is not 65 years old or older and there is no evidence in the record that she is developmentally disabled. Thus, the applicant does not qualify for either of the exceptions listed in the section 1104(c)(2)(E)(ii) of the LIFE Act.

The applicant has failed to demonstrate that she has met the basic citizenship skills requirement as described at 1104(c)(2)(E) of the LIFE Act. Accordingly, the AAO will not disturb the director's decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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.