



U.S. Citizenship  
and Immigration  
Services

L2

[REDACTED]

FILE: [REDACTED]  
MSC-02-225-62869

Office: SAN FRANCISCO

Date: DEC 24 2009

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.

A handwritten signature in black ink, appearing to read "Perry Rhee".

Perry Rhee  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, San Francisco, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. Upon review, the AAO will *sua sponte* reopen the application, withdraw its previous decision, and sustain the appeal.

The director denied the application because the applicant failed to establish that he satisfied the basic citizenship skills requirement under section 1104(c)(2)(E) of the LIFE Act. On appeal, the applicant noted that his English skills had improved between the first and second tests, and requested reconsideration. The AAO dismissed the appeal and affirmed the director's finding that the applicant failed to establish that he satisfied the basic citizenship skills requirements. The AAO also found that due to unexplained inconsistencies in the record concerning the applicant's initial date of entry, the applicant failed to establish continuous residence in the United States throughout the requisite period.

The applicant subsequently requested that the AAO reopen the application *sua sponte*. The applicant stated that he was denied the opportunity to address the inconsistencies regarding the initial date of entry, as the AAO raised the issue for the first time in its decision dismissing the appeal. The applicant explained the inconsistencies in the record, and noted his consistent testimony throughout the proceedings that he first entered the United States in 1980. The AAO finds the applicant's explanation for the inconsistencies reasonable, reopens the application, and withdraws its previous decision.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.

The record establishes that the applicant first entered the United States unlawfully prior to January 1, 1982, and resided continuously in the United States throughout the requisite period, and withdraws its previous finding to the contrary.

In its decision, the AAO found that the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. Furthermore, the applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1), or that he satisfied the alternative "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(II) of the LIFE Act. On motion, the applicant stated that he is qualified for an exception to the basic citizenship skills requirement, and submitted Form N-648, Medical Certification for Disability Exceptions.

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 [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.

The pertinent regulation regarding applicants to be granted an exception to the basic citizenship skills requirement and those circumstances under which the [Secretary of Homeland Security] could consider a waiver of such requirement is contained at 8 C.F.R. § 245a.17(c) and states the following

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 [Secretary of Homeland Security], 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 8 C. F. R. § 245a.1(v).

The regulation at 8 C.F.R. § 312.1(b)(3) provides:

The requirements of paragraph (a) of this section [the basic citizenship skills requirement] 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.

The regulation at 8 C.F.R. § 312.2(b) provides:

Exceptions.

(1) The requirements of paragraph (a) of this section [the basic citizenship skills requirement] 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). Form N-648 must be submitted as an attachment to the applicant's Form N-400, Application for Naturalization. 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. In addition, the medical professionals making the disability determination must sign a statement on the Form N-648 that they have answered all the questions in a complete and truthful manner, that they (and the applicant) agree to the release of all medical records relating to the applicant that may be requested by the Service, and that they attest that any knowingly false or misleading statements may subject the medical professional to the penalties for perjury pursuant to Title 18, United States Code, Section 1546 and to civil penalties under section 274C of the Act. The Service also reserves the right to refer the applicant to another authorized medical source for a supplemental disability determination. This option shall be invoked when the Service has credible doubts about the veracity of a medical certification that has been presented by the applicant. An affidavit or attestation by the applicant, his or her relatives, or guardian on his

or her medical condition is not a sufficient medical attestation for purposes of satisfying this requirement.

The AAO finds that the Form N-648, Medical Certification for Disability Exceptions submitted by the applicant establishes that the applicant is eligible for an exception from the requirement of demonstrating basic citizenship skills under 8 C.F.R. § 245a.17(c), 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b) due to a medically determinable physical or mental impairment lasting more than 12 months, and cannot demonstrate an understanding of the English language and knowledge of the fundamentals of the history, and of the principles and form of government of the United States.

The AAO finds that the applicant has demonstrated that he resided continuously in the United States during the statutory period. The record also establishes that the applicant is exempt from meeting the basic citizenship skills requirement. The applicant has overcome the grounds for the director's denial.

**ORDER:** The appeal is sustained. The director shall continue the adjudication of the application for permanent resident status.