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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 044 60555

Office: NEW YORK

Date: FEB 04 2009

IN RE:

Applicant:

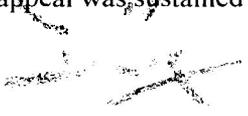
APPLICATION:

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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant twice failed examinations meant to establish that the applicant had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act.

The applicant is represented by counsel on appeal. Counsel argues that the applicant “has less than a high school education” and speaks an African dialect and a limited amount of French. Counsel maintains that the applicant “was not given ‘due consideration’ in terms of his limited educational background and overall nervousness in the face of cold authority.”

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

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 applicants who are at least 65 years of age or who are developmentally disabled. See 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. 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. 8 C.F.R. § 245a.17(a)(2).

Finally, 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 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. 8 C.F.R. § 245a.17(b).

The applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act on November 13, 2001. On June 16, 2004, the applicant was interviewed in connection with his LIFE Act application. He failed both the English literacy and the United States history and government tests. On June 16, 2004, the director issued the notice of intent to deny (NOID) in which she indicated that the applicant had failed the basic citizenship skills examination at his June 16, 2004 LIFE interview. On October 12, 2007, the applicant was again interviewed in connection with his LIFE Act application. He again failed the United States history and government test. On October 12, 2007, the director denied the application based on the reasons set out in the NOID.

On appeal, counsel requests that consideration be given to the applicant's limited education and language skills. The record verifies that the applicant was given two opportunities to demonstrate a working knowledge of fundamental English and American history, and was unable to do so over a period of several years. Congress has not provided a waiver for these requirements except for

applicants who are 65 years of age or older, or for those applicants who are developmentally disabled. The applicant does not qualify for either of these exceptions. *See* section 1104(c)(2)(E)(ii) of the LIFE Act.

Furthermore, the documents in the record indicate that the applicant has a series of arrests and convictions for misdemeanor offenses and administrative code infractions in the state of New York: (1) a 1995 conviction for *disorderly conduct* in violation of section 240.20 of the New York Penal Code; (2) a 1998 conviction for *resisting arrest* in violation of section 205.30 of the New York Penal Code as well as a conviction for an administrative code infraction; (3) a 1999 conviction for *counterfeiting in the third degree* in violation of section 165.71 of the New York Penal Code; (4) a 2000 conviction for an administrative code infraction; (5) and a 2002 conviction for *trademark counterfeiting in the third degree* in violation of section 165.71 of the New York Penal Code.

An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. 8 C.F.R. § 245a.18(a)(1). "Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The record before the AAO contains one abstract that indicates the applicant was sentenced to three days of community service and one year of probation for the December 15, 2002 conviction for trademark counterfeiting. The AAO notes that trademark counterfeiting is considered to be a Class A misdemeanor under New York law. Likewise, the applicant's conviction for resisting arrest is also considered to be a Class A misdemeanor. The applicant's two convictions for trademark counterfeiting and his one conviction for resisting arrest are sufficient to disqualify him for permanent resident status under the LIFE Act. 8 C.F.R. § 245a.18(a)(1). However, the AAO notes that the applicant was not informed of the potential immigration consequences of his criminal convictions in either the Notice of Intent to Deny (NOID) or in the ultimate decision denying his application. Thus, the AAO declines to dismiss the appeal on the grounds of the applicant's multiple criminal offenses.

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. Thus, he is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act.

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