

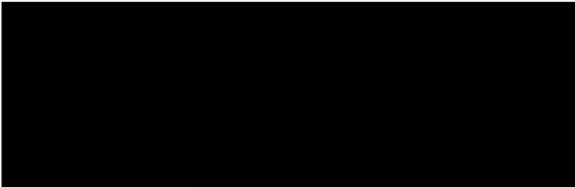
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 01 278 60034

Office: NEW YORK

Date: FEB 04 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: On August 17, 2007, the Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application, finding that the applicant failed to pass the basic LIFE Act citizenship skills requirement. The director noted that on July 12, 2004, the applicant did not pass the test of his knowledge of U.S. history, government and English. The applicant was scheduled for a second interview. On March 4, 2005, the applicant failed to appear for the second and final test of his English ability and knowledge of U.S. history and government and failed to provide a valid reason for not appearing.

On appeal, the applicant asserts that he had to leave the United States because of a personal emergency from February 25, 2005, until April 29, 2005. He states that before he left, he sent a letter to the immigration office indicating that he had to leave and asking that his interview be rescheduled. He submits photocopies of his passport, his airline ticket, and his authorization for advance parole.

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 Attorney General) 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 Attorney General may waive all or part of the requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does he satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act by “[s]peaking and understanding English during the course of the interview for permanent resident status” and answering questions based on the subject matter of approved citizenship training materials, or [b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS).” 8 C.F.R. §§ 245a.3(b)(4)(iii)(A)(1) and (2).

In the alternative, an applicant can satisfy the basic citizenship skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act. The citizenship skills requirement of the section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). As specified therein, an applicant for LIFE Legalization must establish that:

- (1) He or she has complied with the same requirements as those listed for naturalization applicants . . . ; or,
- (2) He or she has a high school diploma or general education development diploma (GED) . . . ; or,
- (3) 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. . . .”

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must submit evidence to show compliance with the basic citizenship skills requirement “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 regulation at 8 C.F.R. § 245a.17(b) states that:

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) and (a)(3) of this section [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)]. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

The record reflects that on July 5, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. The applicant appeared for an interview on July 12, 2004, based on his application. On July 12, 2004, the director issued a Notice of Intent to Deny (NOID) the application because the applicant failed the U.S. history and government and English exam. The NOID specifically indicated that the applicant was scheduled to appear on March 4, 2005, at 9:00 for a final re-examination. Therefore, the applicant had almost a full

year's notice of when his second exam would occur. The director informed the applicant that failure to appear would result in denial of his application based solely on 8 C.F.R. 245a.17(b).

The applicant failed to appear for his interview on March 4, 2005, and to provide a valid reason for not appearing.

On August 17, 2007, the director denied the application, based on the applicant's failure to pass the citizenship exam during his first interview and failure to appear on March 4, 2005, for his second interview.

The applicant asserts that he had to leave the United States because of a personal emergency and that he wrote to the director asking for his interview to be rescheduled. The record does not contain any such request from the applicant.

The record does not contain documentation to indicate that the applicant made any attempt to contact the director about his reason for not appearing at the interview. The applicant was properly notified of the date of his second interview and failed to appear at that interview without good cause. The applicant submits proof that he was out of the United States on the date his second interview was scheduled but does not submit a copy of the letter he says he submitted asking for the interview to be rescheduled or documentation that such a letter was sent. Consequently, the director's decision to deny the LIFE Act application will be affirmed.

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 applicant has failed to meet this burden.

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