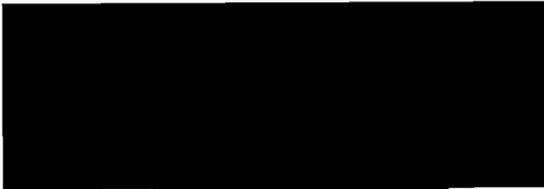


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Services**

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FILE:

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Office: HOUSTON

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IN RE: Applicant:



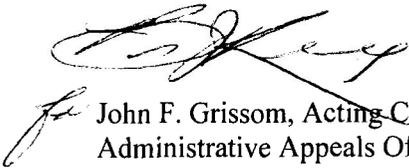
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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.


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

On appeal counsel asserts that the applicant has attended 40 hours of English language instruction at an accredited school, and therefore fulfilled the basic citizenship skills requirement for LIFE legalization.

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 June 4, 2002, the applicant, a native of Mexico, filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On September 5, 2003, 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 October 15, 2004, the applicant was interviewed again for LIFE legalization, and again failed both parts of the test of his basic citizenship skills.

On October 18, 2004, the director denied the application on the ground that the applicant had not satisfied the basic citizenship skills requirement for LIFE legalization.

Counsel appealed on November 12, 2004, asserting that the applicant was never issued a Notice of Intent to Deny (NOID), as required by the regulation at 8 C.F.R. § 245a.20(a). Counsel also asserted that the applicant was currently attending a class in English as a Second Language (ESL) and Civics at Houston Community College, and submitted a photocopy of a course enrollment document.

On November 15, 2006, a decision was issued by the Chief, AAO, remanding the case to the director for the issuance of a NOID, as required in the regulation cited by counsel in the appeal, and for the entry of a new decision thereafter. Should the new decision be adverse to the applicant, the remand order specified that it be certified to the AAO.

In accord with the AAO's remand order, the director issued a NOID on January 18, 2007, advising both the applicant and counsel of the director's intention to deny the application based on the applicant's failure at two different interviews to satisfy the basic citizenship skills requirement for legalization under the LIFE Act. The applicant was given 30 days to submit rebuttal information or additional evidence.

No response was received during the 30-day period. On April 26, 2007, therefore, the director issued a Notice of Denial based on the findings in the NOID.

Instead of certifying the case to the AAO, in accord with the remand order of November 15, 2006, the Notice of Denial advised the applicant that he could file an appeal within 30 days. The applicant thereupon submitted a Form I-290B, Notice of Appeal, which was received at the Houston District Office within that 30-day window on May 25, 2006. On May 29, 2006, the Houston District Office issued a Form I-72, confirming to the applicant and counsel that the Form I-290B had been received on May 25, 2007 with a fee of \$110.00, but advising that a fee of \$385.00 was required to file it. The Form I-290B bears a fee receipt stamp showing that the requested \$385.00 was subsequently received from the applicant and the appeal duly filed on June 25, 2007.

The Notice of Denial should have informed the applicant that his application was being certified to the AAO, in conformance with the remand order of November 15, 2006, since an appeal had already been filed by the applicant, with the requisite fee, in November 2004. Instead, the director erroneously advised the applicant that he could file (another) appeal, and compounded the error by stating that the filing fee for an appeal was \$110.00 (which was incorrect since the filing fee for appeals had been increased to \$385.00 on September 28, 2005). The applicant followed the director's initial erroneous instruction in the Notice of Denial by submitting a new Form I-290B with a \$110.00 fee, which was not cashed, then followed the director's second erroneous instruction on the Form I-72 by submitting a \$385.00 fee, which was cashed by the District Office.

Since the application should have been certified to the AAO as soon as the director issued the Notice of Denial on April 26, 2007, the AAO will review the case as if it had been properly certified by the director.

Counsel asserts on appeal – on the second (unnecessary) Form I-290B filed in 2007 as well as in a brief accompanying the initial Form I-290B filed in 2004 – that the applicant satisfied the basic citizenship skills requirement for LIFE legalization by attending a 40-hour ESL and Civics course at Houston Community College, a state-recognized and accredited learning institution, in accord with the regulations. As evidence thereof counsel submitted with the original appeal on November 12, 2004, a photocopied course enrollment data entry form of the Houston Community College System/Northeast, indicating that the applicant enrolled in an English language course on November 6, 2004, to be held at Stanaker Library under the instruction of an [REDACTED]. This enrollment document does not comport with the requirements of 8 C.F.R. § 245a.17(a)(3). It states

only that the applicant was enrolled in an English language program course, without indicating that the classes comprised a course of study encompassing one academic year and 40 hours or more of instruction, or that the classes included a U.S. history and government component. There is no subsequent documentation in the record confirming that the applicant actually attended the classes. The document does not show the applicant's A-number. Furthermore, the document was not submitted to the district office by the time of the applicant's second interview and examination on October 15, 2004, which was the latest date allowed in the regulation. Indeed, the enrollment data entry form could not have been submitted by the time of the second interview because it was dated three weeks later – on November 6, 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 examinations, in accordance with 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, in accordance with 8 C.F.R. § 245a.17(a)(2). Nor did the applicant show by the time of his second interview, on October 15, 2004, 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, in accordance with 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.

The appeal will be dismissed, and the application denied.

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

Since the applicant was erroneously directed to submit a second Form I-290B and filing fee of \$385.00 when the director issued the Notice of Denial on April 26, 2007, this file shall be returned to the director with instructions to issue a refund to the applicant in the amount of \$385.00.