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U.S. Citizenship
and Immigration
Services

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FILE:



Office: HOUSTON

Date:

JAN 05 2009

– consolidated herein]

MSC 02 071 63218

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

The director denied the application on May 23, 2005, 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 for the applicant submits a brief and additional documentation.

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 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 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).

The applicant was neither 65 years of age nor developmentally disabled at the time of filing his Form I-485, subsequent to filing the application but prior to his interviews, or at the time of his interviews. Therefore, he is not eligible for a waiver of all or part of the above requirements under the provisions of 8 C.F.R. § 245a.17(c).

The regulations at 8 C.F.R. §§ 245a.12(d)(10), and 245a.17(a)(2) and (3) specify that applicants may 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....”

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 and 312.2.

An applicant may also establish that he or she has met the requirements of section 312(a) of the 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).

Finally, an applicant may establish that he or she has met the requirements of section 312(a) of the Act by providing evidence that he or she has attended or is 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. The applicant may provide documentation of such on the letterhead stationery of said institution prior to or during the LIFE interview. *See* 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 December 10, 2001, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his application - on July 15, 2004, and again on May 4, 2005. On both occasions, the applicant was unable to understand sufficient English for the interview to be conducted. Therefore, the director denied the application on May 23, 2005.

Counsel filed a timely appeal from the director's decision on June 21, 2005. On appeal, counsel asserts that the applicant was never issued a Notice of Intent to Deny (NOID) as required by 8 C.F.R. § 245a.20(a)(2). Counsel also presents a certification from the Houston Community College, issued to the applicant on December 7, 2002, and asserts that the applicant has thus fulfilled the basic citizenship skills requirement by satisfying the alternative listed at 8 C.F.R. § 245a.17(a)(3).

According to counsel, the director was required to issue a NOID by the regulation at 8 C.F.R. § 245a.20(a), which would have given the applicant 30 days to submit evidence that he satisfied the basic citizenship skills requirement for LIFE legalization. While 8 C.F.R. § 245a.20(a) is a regulation of general applicability in LIFE Act cases, the regulation at 8 C.F.R. § 245a.17 provides the specific procedures applicable to the citizenship skills requirement for LIFE legalization. The director followed that regulation by granting the applicant a second opportunity to be tested after six months had passed. When the applicant was scheduled for a second interview he had the opportunity to either pass the test or present evidence of his enrollment in and completion of ESL courses in fulfillment of the basic citizenship skills requirement for LIFE legalization. Accordingly, the AAO concludes that the director adhered to proper procedure in adjudicating the application.

On appeal, counsel submits a Certificate of Completion from the Houston Community College System, dated December 7, 2002, that reflects the applicant's successful completion of a course in

"ESL I and the U.S. History." The certificate states that the applicant completed "48 Contact Hours - 4.8 CEU's." However, the certificate does not indicate that the course of study was for a period of one academic year (or the equivalent thereof according to the standards of the learning institution). There is no evidence in record showing the duration of the course or the dates on which the applicant attended. Consequently, the evidence fails to support the applicant's contention that he has fulfilled the basic citizenship skills requirement by demonstrating compliance with 8 C.F.R. § 245a.17(a)(3).

The applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). The applicant does not have a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(a)(2). Nor has the applicant provided evidence to demonstrate that she had completed or was attending at the time of the second interview a state recognized, accredited learning institution in the United States that provides a course of study for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) with curriculum including at least 40 hours of instruction in English and United States history and government as allowed under 8 C.F.R. § 245a.17(a)(3).

Therefore, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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