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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]

Office: TUCSON

Date: **JAN 26 2009**

MSC 02 150 61434

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.

John F. Grisson, 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, Tucson, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel for the applicant states that the applicant has satisfied the basic citizenship skills requirements because she has taken and is enrolled in English as a second language courses that satisfy the basic citizenship skills requirement. Counsel submits additional evidence on appeal.

The issue in this proceeding is whether the applicant has established that she satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

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.

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:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States . . . . 8 C.F.R. § 245a.17(a)(2), or

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 . . . . 8 C.F.R. § 245a.17(a)(3).

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.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was first interviewed in connection with her LIFE Act application, on January 27, 2004. On that occasion, the applicant failed to demonstrate a minimal knowledge of English, and knowledge of civics and history of the United States. The applicant does not dispute this on appeal. The director granted the applicant an additional 6 months to prepare for a second and final examination. The applicant was scheduled for re-examination on November 14, 2006. However, again the applicant failed to demonstrate a minimal knowledge of English and knowledge of civics and history of the United States. The applicant did not provide 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).

On appeal, the applicant admits that she had twice failed to pass the basic citizenship skills requirement. Counsel for the applicant asserts, however, that the applicant has taken courses to meet the requirements, but due to her husband’s illness the applicant has been unable to complete the requisite courses. Counsel states that the applicant enrolled in English classes, however, since March 2006, the applicant’s husband has been suffering with renal failure and requires dialysis three

times per week. As a result, the applicant, being her husband's primary caregiver, has been unable to complete the requisite courses. With the appeal, counsel submits:

- 1) Three letters from [REDACTED] of America Santa Cruz County, two are dated November 28, 2006, and one is dated February 9, 2007. One of the November 28, 2006 letters states that the applicant and her husband were both enrolled in "ELAA (English Language Acquisition for Adults) beginning Level I course from February 2004 to June 2004, and completed 51 hours of coursework. The other letter states that the applicant and her husband were both enrolled in "ELAA (English Language Acquisition for Adults) beginning Level I course from February 2006 to June 2006. In her February 9, 2007 letter [REDACTED] states that the organization, Literacy Volunteers of America Santa Cruz County, is recognized by the Arizona Department of Education, and "... Adheres to strict curriculum guidelines and teaches to the Arizona Department of Education Standards for Adult Education;"
- 2) A letter from [REDACTED] of the Santa Cruz County Continuing Education Adult Education Program, dated January 11, 2007, stating that the applicant is enrolled in "Our program waiting list;"
- 3) A letter from [REDACTED], dated January 15, 2007, stating the applicant has been unable to do her coursework because as the caregiver of [REDACTED] her husband, who is being treated for End Stage Renal Disease, she has been responsible for the supervision of his care.

The applicant, who is neither 65 years old nor has established that she is developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does she satisfy the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because she does not meet the requirements of section 312(a) of the Immigration and Nationality Act (Act).

Counsel asserts that the applicant's attendance in classes with Literacy Volunteers of America, and her enrollment with Cruz County Continuing Education Adult Education Program satisfies the requirements under 8 C.F.R. § 245a.17(a)(3). The letters from Literacy Volunteers of America, however, do not specify the course contents and do not indicate whether the curriculum includes at least 40 hours of instruction in English and United States history and government as required under 8 C.F.R. § 245a.17(a)(3).

Also, the letter from the Cruz County Continuing Education Adult Education Program states only that the applicant is on a "waiting list". There is no evidence of record that the applicant has enrolled in classes in U.S. history and government as required under 8 C.F.R. § 245a.17(a)(3). The applicant stated that she could not complete the required courses due to her husband's illness. However, there is no such exception in the regulations that would permit the applicant to avoid the requirements under 8 C.F.R. § 245a.17(a)(3). The applicant did not submit the required evidence before or at her

second interview. This requirement is a mandatory time frame and clearly stated in the regulations at 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, and does not meet the exception under 8 C.F.R 245a.1(v). Accordingly, the AAO will not disturb the director’s decision that 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.