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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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U.S. Citizenship
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FILE:

MSC 01 352 61466
MSC 05 251 30632-APPEAL

Office: NEW YORK

Date:

JUN 05 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 on appeal. The appeal will be dismissed.

The director administered two tests of the applicant's English ability and knowledge of U.S. history and government which he did not pass. The director determined the applicant failed to demonstrate a minimal understanding of ordinary English and a knowledge and understanding of the fundamentals of the history, and principles and forms of government of the United States.

On appeal, counsel states the applicant demonstrated that he possesses a minimal understanding of the English language and that he was able to communicate with the officer at the time he was interviewed. Counsel further stated that the applicant is now confused because he does not know why he couldn't pass the interview or why the officer did not believe he did not pass the basic citizenship skills test.

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 issue in this proceeding is whether the applicant has met the requirements relating to a minimal understanding of ordinary English and knowledge and understanding of the history and government of the United States.

On May 5, 2004, the applicant was interviewed in connection with his LIFE Act application and tested on his English ability and his knowledge of United States history and government. When he failed to demonstrate basic citizenship skills, he was retested on November 19, 2004 and failed to pass the second test.

On appeal, counsel states the applicant demonstrated that he possesses a minimal understanding of the English language and that he was able to communicate with the officer at the time he was interviewed. Counsel further stated that the applicant is now confused because he does not know why he couldn't pass the interview or why the officer did not believe he did not pass the basic citizenship skills test. The record reflects applicant was given two standard tests to complete. On May 5, 2004 he failed the history and government portion of the first test by incorrectly answering nine of the ten government and history questions and failing the English writing sample portion of the examination. When he was retested on November 19, 2004, he incorrectly answered one of the ten government and history questions given. However, he again failed the English writing sample portion of the examination. Although the applicant may have felt that he was able to communicate with the officer when he was interviewed, the record reflects that his test results were not acceptable.

Based on the above, the applicant has failed to establish the citizenship requirements under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

It is noted he record contains a Form I-213, Record of Deportable Alien, dated November 15, 1982, indicating that that an officer of the former Immigration and Naturalization Service (INS) apprehended the applicant at or near Laredo, Texas. At his interview with the INS officer, the applicant stated that he had last entered the United States without inspection on November 15, 1982. On the Form I-217, Information for Travel Document or Passport, the applicant certified that he had resided from birth until November 15, 1982 in Ecuador. It is determined that the applicant did not enter the United States before January 1, 1982 and has not established that he has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. Therefore, his appeal is dismissed for this additional reason.

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