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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 029 60702

Office: NEW YORK

Date: JUN 15 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:

SELF-REPRESENTED

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 (AAO) on appeal. The appeal will be dismissed.

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

On appeal, applicant asserts that he is trying to speak English. He submits copies of two certificates as additional evidence. He requests a “second chance to get his alien card.”

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 “basic 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 interviewed twice in connection with his LIFE Act application, on February 2, 2004, and again on September 14, 2004. On both occasions, the applicant failed to demonstrate a minimal understanding of ordinary English. At the first interview, the applicant was unable to speak English in order to be sworn-in. The applicant signed a Declaration, dated February 2, 2004, stating that he did not read, write and speak English, and to reschedule the interview. At the second interview, the applicant failed to pass the English portion of the interview. The applicant does not dispute this on appeal.

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, applicant submits a copy of a December 1999 certificate from the New York Language Center. The certificate indicates that the applicant satisfactorily completed English as a Second Language – 7 Levels. The certificate fails to indicate whether the institution is a state

recognized, accredited learning institution in the United States and whether the course of study is for a period of one academic year. While the certificate reflects that the applicant completed an English as a Second Language course, it does not indicate whether the curriculum included at least 40 hours of instruction in both English and United States history and government as required under 8 C.F.R. § 245a.17(a)(3). Furthermore, the applicant did not submit any supporting documentation as credible evidence of the above course work, such as transcripts, receipts or bills, or a letter from the institution certifying the applicant's attendance.

The applicant also submits an August 2, 2004, certificate from the Northern Manhattan Coalition for Immigrant Rights. The certificate indicates that the applicant successfully completed a 20 hour Citizenship class in preparation for his citizenship interview. The certificate fails to indicate whether the institution is a state recognized, accredited learning institution in the United States and whether the course of study is for a period of one academic year as required under 8 C.F.R. § 245a.17(a)(3). Furthermore, the applicant did not submit any supporting documentation as credible evidence of the above course work, such as transcripts, receipts or bills, or a letter from the institution certifying the applicant's attendance.

Regardless of whether the above evidence meets the requirements under 8 C.F.R. § 245a.17(a)(3), the applicant did not submit the evidence prior to or at the second interview on September 14, 2004. This requirement is a mandatory time frame and clearly stated in the regulations at 8 C.F.R. § 245a.17(a)(3). The record reflects that the applicant submitted the evidence on June 9, 2005, 268 days after the second interview.

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 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.