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U.S. Citizenship and Immigration Services
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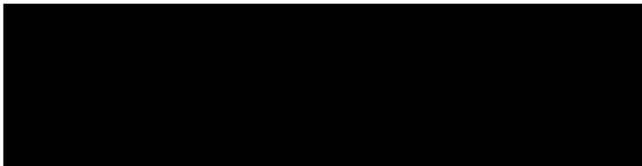
MSC 02 303 60568

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, filed on July 30, 2002, was denied by the director in Dallas, Texas, on July 12, 2006. It is now on appeal before the Administrative Appeals Office (AAO). The matter will be remanded to the director for further consideration and the issuance of a new decision.

The director denied the application on two grounds, specifically: (1) that the applicant failed to satisfy the “basic citizenship skills” requirement to be eligible for legalization under the LIFE Act, and (2) that the applicant had been convicted of three misdemeanors committed in the United States.

On appeal counsel asserts that the director’s decision was erroneous on both grounds. Counsel contends that the applicant (1) did satisfy the basic citizenship skills requirement for LIFE legalization and (2) has only been convicted of two misdemeanors and thus is not statutorily ineligible for LIFE legalization.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act.

In addition, every applicant must establish that he or she has not been convicted of a felony or three or more misdemeanors committed in the United States, and meets the “basic citizenship skills” requirement of section 312(a) of the Immigration and Nationality Act. *See* section 1104(c)(2)(D)(ii), and section 1104(c)(2)(E), of the LIFE Act.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. *See* 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant’s claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application

pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Continuous unlawful residence and physical presence

The applicant, who was born in Mexico in 1946 and claims to have lived in the United States since 1977, has submitted extensive documentation of his residence and physical presence in the United States during the 1980s. In a Notice of Intent to Deny dated December 22, 2005, which focused on the applicant’s criminal record as the ground for denial, the director stated that the applicant appeared to have established that he entered the United States before January 1, 1982 and lived illegally in the United States through May 4, 1988. In accord with the director’s finding, the AAO is persuaded by the evidence of record that the applicant was continuously resident in the United States in an unlawful status, and continuously physically present in the country, during the requisite periods for LIFE legalization.

Basic citizenship skills

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).

The record shows that the applicant was initially interviewed for LIFE legalization on January 3 (or 23), 2003. During the examination portion of the interview he failed to demonstrate a basic understanding of ordinary English and a basic knowledge of U.S. history and government.

The applicant was subsequently scheduled for a second interview at the Dallas District Office on June 21, 2004. The record includes another test of the applicant's basic citizenship skills at the second interview, which he once again appears to have failed (though the test sheet does not contain a specific notation in this regard). The applicant also submitted a certificate from Mountain View

College, in Dallas County, dated May 15, 2004, stating that the applicant “has successfully completed the requirements of Citizenship Basics.”

At his second interview on June 21, 2004, the applicant was issued a Request for Evidence (RFE) directing him to submit various documentation to the district office by August 21, 2004, including “proof of attendance in approved course at Mountain View College.” In response to the RFE the applicant apparently submitted a photocopy of the Mountain View College certificate already in the record.

On April 14, 2006, the director issued a Notice of Intent to Deny (NOID). The applicant was advised that the Mountain View College certificate did not meet the regulatory requirements set forth in 8 C.F.R. § 245a.17(a)(3) to fulfill the basic citizenship skills for LIFE legalization. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the NOID, whereupon the director issued a Decision on July 12, 2006, denying the application in part for failure to meet the basic citizenship skills requirement.

On appeal counsel reiterates his assertion that the applicant fulfilled the basic citizenship skills requirement for LIFE legalization, resubmits another copy of the Mountain View College certificate dated May 15, 2004, and submits the following additional documents:

- A photocopied “Registration Summary” of Dallas County Community College District, dated April 27, 2004, stating that the applicant was enrolled in two courses – Citizenship Basics and ESL: Fundamentals of Communication – that were scheduled to meet for seven hours on Saturdays beginning May 15 and for an hour and 20 minutes on weekday evenings beginning on May 24, respectively.
- A photocopied “Official Cash Receipt” of Dallas County Community College District from the applicant, dated April 27, 2004, in the amount of \$155.00 (the total cost of the two courses listed on the Registration Summary above).
- A photocopied certificate from El Centro College in Dallas County, dated May 4, 2003, awarding the applicant 6.0 continuing education units for the successful completion of the “ESL Getting Started” course.

Another photocopied certificate from Mountain View College in Dallas, dated July 20, 2004, stating that the applicant “has successfully completed the requirements of ESL: Fundamentals of Communication.”

- Three additional documents from Mountain View College and Dallas County Community College District, dated in August and September 2006, indicating that the applicant was enrolled in additional English language and civics courses at that time.

The foregoing documentation does not comport with the requirements of 8 C.F.R. § 245a.17(a)(3). It is unclear whether any of the classes, individually or cumulatively, for which the applicant apparently registered in 2004 comprised one academic year and 40 hours or more of instruction. None of the documents show the applicant's A-number. In addition, the credibility of some of the documents looks questionable. The "Registration Summary" of Dallas County Community College District contains myriad font sizes and inconsistent spacing. Moreover, it lists the "Citizenship Basics" course as beginning on May 15, 2004, which is the same date as the certificate submitted by the applicant as proof of his completion of the course.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

Furthermore, except for the certificate from Mountain View College, now of questionable veracity, none of the other documents were submitted to the district office by the time of the applicant's second interview and examination on June 21, 2004, which was the latest date allowed in the regulation. The documentation dated in 2006 is clearly far too late, and counsel has submitted no evidence in support of his assertion that the document from Dallas County Community College District dated April 27, 2004, stating that the applicant was enrolled in language and civics courses, was submitted to the district office at any time prior to the appeal brief in September 2006.

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 June 21, 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.

Since the applicant has failed to demonstrate that he meets the basic citizenship skills requirement for LIFE legalization, as described at 1104(c)(2)(E) of the LIFE Act, the AAO concurs with the director's decision to deny the application.

On this ground alone the applicant is ineligible for permanent resident status under the LIFE Act.

Criminal Record

As previously stated, an alien is ineligible for LIFE legalization if he or she has been convicted of a felony or of three or more misdemeanors committed in the United States. See section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1).¹

In a Notice of Intent to Deny (NOID) dated December 22, 2005, the director cited the applicant's multiple arrests and convictions in Texas – including at least four arrests and two misdemeanor convictions – which could make the applicant statutorily ineligible for LIFE legalization. Three of the arrests – in 1983, 1995, and 1998 – were for misdemeanor charges of driving while intoxicated (DWI). The final arrest, in 2003, was on a misdemeanor charge of assault and battery. The applicant was convicted of two DWI charges in 1996 and 1998, and advised in the NOID to submit final court dispositions of the other two arrests in 1983 and 2003. In response to the NOID the applicant submitted a court record showing that the 2003 arrest charge was still pending. The district office also obtained court records showing that two charges stemming from the DWI arrest in 1983 were dismissed in 1988 and 1990.

In a subsequent NOID dated April 14, 2006 (which also addressed the basic citizenship skills issue), the director stated that Service records showed the applicant to have been convicted of at least three misdemeanors in Dallas County, Texas: (1) for DWI on February 9, 1996; (2) for DWI on June 12, 1998; and (3) for Assault on May 9, 2003. The applicant was given 30 days to submit additional evidence. When no response was received, the director denied the application on July 12, 2006.

On appeal counsel submitted court records showing that the assault charge stemming from the 2003 arrest was still pending in May 2006. Since the applicant had not been convicted of that charge, counsel pointed out that the applicant had only been convicted of two misdemeanors, which did not disqualify him for LIFE legalization. The record has subsequently been supplemented with the final court disposition of the assault charge, showing that it was dismissed on February 23, 2007.

Since the applicant has only been convicted of two misdemeanors committed in the United States, both DWIs, the AAO concludes that he is not ineligible for legalization under section 1104(c)(2)(D)(ii) of the LIFE Act. This additional ground for the director's denial of the application must therefore be withdrawn.

¹ As defined in 8 C.F.R. § 245a.1(o): “*Misdemeanor* means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p)”

As defined in 8 C.F.R. § 245a.1(p): “*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception, for purposes of 8 CFR part 245a, the crime shall be treated as a misdemeanor.”

Consideration of the Applicant's Eligibility for Temporary Resident Status

Based on the foregoing discussion, the AAO determines that the only valid ground for denial of the application for adjustment to permanent resident status under the LIFE Act is the applicant's failure to satisfy the basic citizenship skills requirement. In this circumstance the regulation at 8 C.F.R. § 245a.6 comes into play, which provides as follows:

If the district director finds that an eligible alien as defined at § 245a.10 [an alien who was "front-desked" when attempting to file an application for temporary resident status during the original filing period under the Immigration Reform and Control Act of 1986 (IRCA) and subsequently filed a written claim for class membership in one of the legalization class action lawsuits before October 1, 2000] has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director shall consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act [INA], as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A). If the eligible alien has established eligibility for adjustment to temporary resident status, the LIFE Legalization application shall be deemed converted to an application for temporary residence under this Subpart A.

The AAO notes that an alien applying for temporary resident status under Subpart A (IRCA) is not required to demonstrate a basic knowledge of the English language and U.S. history and government, in contrast to aliens seeking permanent resident status under Subpart B (LIFE Act). Only after an alien qualifies for temporary resident status and subsequently applies for adjustment to permanent resident status must he or she fulfill the basic citizenship skills relating to English and U.S. history and government.

In accordance with the regulation at 8 C.F.R. § 245a.6, the AAO will remand this application to the director for consideration of the applicant's eligibility for temporary resident status under IRCA, and the issuance of a new decision.

ORDER: The director's decision of July 12, 2006 is withdrawn. The application is remanded to the director for consideration of the applicant's eligibility for adjustment to temporary resident status under the Immigration Reform and Control Act of 1986, and the entry of a new decision. If the decision is adverse to the applicant, it shall be certified to the AAO for review.