

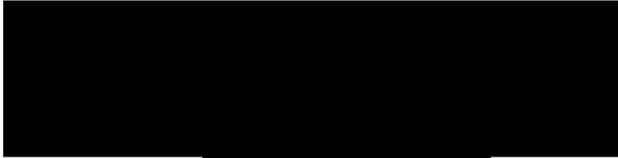
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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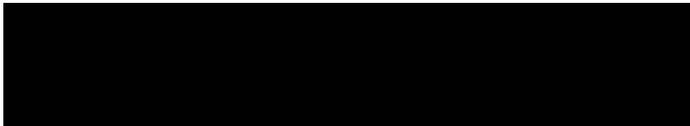
Office: BLOOMINGTON

Date: **JUN 22 2009**

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:



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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 in Bloomington, Minnesota. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application 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 submitted a Form N-648, Medical Certification for Disability Exceptions completed and signed by [REDACTED], a licensed Psychologist, asserting that the applicant is eligible for a waiver of the citizenship examination based on his mental and psychological disability.

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 applicant, a native of Guatemala who claims to have resided in the United States since October 1981, filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act (Form I-485) on June 6, 2002.

On August 3, 2006, and again on January 12, 2007, the applicant was interviewed for LIFE legalization. On both occasions, the applicant failed to demonstrate a basic understanding of ordinary English and a basic knowledge of U.S. history and government during the examination portion of the interview. On August 23, 2006, the director issued a Notice of Intent to Deny (NOID) the application on the ground that the applicant had not submitted sufficient credible evidence to establish his continuous residence in the United States during the requisite period. The director noted inconsistencies in the record that undermined the veracity of the applicant's claim to have met the continuous residence requirement. The applicant was granted 30 days to submit additional evidence.

On September 21, 2006, the director receives the applicant's response to the NOID in which the applicant provided some explanations for some of the evidentiary discrepancies cited in the NOID. The applicant did not submit additional documentation in support of his application.

Following the second interview on January 12, 2007, the applicant's counsel submitted a request for waiver of civics examination for the applicant dated April 20, 2007, requesting that the director withhold his decision to allow the applicant to enroll in a course of study that will satisfy the regulatory requirement or in the alternative submit a Form N-648 medical waiver which will

exempt the applicant from taking and passing the citizenship test. Counsel however, did not submit any documentation as requested in her April 20, 2007 request, nor did she submit additional documentation bearing on the applicant's continuous residence in the United States during the requisite period. On October 16, 2007, the director denied the application on the ground that the applicant failed to satisfy the basic citizenship skills requirements for LIFE legalization. The director did not issue a decision on whether the applicant met the continuous residence requirement.

On February 28, 2008, counsel submitted a Form N-648, Medical Certification for Disability Exemptions, and a copy of a diagnostic assessment and psychological evaluation, which was completed and signed by [REDACTED] a licensed psychologist. [REDACTED] indicated on the Form N-648 that the applicant suffers from Dementia of the Alzheimer's type; that the applicant has unexpected difficulty with learning new information and/or recalling previously learned information. [REDACTED] indicated that the applicant is unable to learn and/or demonstrate an ability to speak, read or write English, and that the applicant is unable to learn and/or demonstrate knowledge of U.S. history and civics, even in a language the applicant understands.

The applicant has not satisfied the basic citizenship skills for LIFE legalization as set forth in the regulations. He did not pass an examination of basic English language ability and knowledge of U.S. history and government, 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 at the time of his second interview on January 12, 2007, 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 was not 65 years old or older at the time he filed his application in 2002 or at the time of his interviews in 2006 and 2007. Thus, the applicant does not qualify for an exception under this provision.

The issue to be addressed in this case is whether the applicant has established that he qualifies for an exception to the Basic Citizenship Skills requirements under 8 C.F.R. § 245a.17(c) due to a physical or mental impairment as described in 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b), or a discretionary waiver under 8 C.F.R. § 245a.17(c)(2) due to a developmental disability as described under 8 C.F.R. § 245a.1(v).

Physical or mental impairment

The regulation at 8 C.F.R. § 312.1(b)(3) states, in pertinent part:

The [basic citizenship skills requirement] shall not apply to any person who is unable, because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12

months, to demonstrate an understanding of the English language For purposes of this paragraph, the term *medically determinable* means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency as outlined in paragraph (c) of this section.

The regulation at 8 C.F.R. § 312.2(b) states, in pertinent part:

The [basic citizenship skills requirement] shall not apply to any person who is unable to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States because of a medically determinable physical or mental impairment, that already has or is expected to last at least 12 months For the purposes of this paragraph, the term *medically determinable* means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual to be unable to demonstrate the knowledge required by this section or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications.

On the Form N-648, and psychological evaluation completed and signed by [REDACTED], a licensed psychologist, dated January 21, 2008, he indicated that he met the applicant only once – on January 8, 2008. Based on the one time examination of the applicant, the applicant and his family’s statement during the examination, [REDACTED] indicated that according to the tests administered and the applicant’s report of history, that the applicant suffers from Bereavement (DSM-IV-TR:v62.82), Neglect of Child (DSM-IV-TR;995.52), Physical Abuse of Child (DSM-IV-TR;995.54), Anxiety Disorder, NOS (DSM-IV-TR;300.00), Dementia of Alzheimer’s Type (DSM-IV-TR;294.10), Borderline Intellectual Functioning (DSM-IV-TR;V62.89). [REDACTED] opined that the applicant’s diagnosis of Dementia of the Alzheimer’s type makes the applicant unable to learn English and/or U.S. Civics and History, and is therefore eligible for a waiver from the U.S. History and Civics Test.

Although [REDACTED] submitted copies of some of the tests administered on the applicant, he indicated that his examination of the applicant on January 8, 2008 was his one and only medical visit from the applicant, that he relied on the applicant’s report of his history which he assumed to be accurate, that there was no prior medical or psychological record submitted by the applicant which he reviewed in connection with this assessment, and that the “report reflects [the applicant’s] condition at the time of this evaluation and may not reflect [the applicant’s] condition at any later or earlier time period. I reserve the right to reappraise and revise my statements and conclusions about

this individual, made in this report, if I receive additional information. Also, over time, the statements and conclusions in this report may come to be no longer accurate.”

The record reflects that the applicant filed a Form I-693, Medical Examination of Aliens Seeking Adjustment of Status. in this proceeding, which was completed and signed by the examining physician, [REDACTED] on September 18, 2006. On that form [REDACTED] indicated that he found the applicant to have “no apparent defect, disease or disability.” The list of possible defects, diseases or disability conditions printed on the form includes “mental defect” and “mental retardation.”

The report by [REDACTED] stating that he found the applicant has no apparent mental defect or mental retardation when he examined the applicant on September 18, 2006, is contrary to the report prepared by [REDACTED] in which he diagnosed the applicant with Dementia of the Alzheimer’s type when he examined the applicant on January 8, 2008. The applicant did not submit any documentation to reconcile the two conflicting reports.

Based on the foregoing analysis, the AAO determines that the applicant has failed to establish that he has a medically determinable mental impairment “which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language. . . [and] unable to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and from of government of the United States,” as required under 8 C.F.R. § 312.1(b)(3) and 312.2(b) to exempt him from the basic citizenship skills requirements for LIFE legalization.

As the applicant has not established that he has a medically determinable mental (or physical) impairment as defined in the foregoing regulations, that would make him eligible for a waiver under 8 C.F.R. § 245a.17(c), he is not eligible for an exemption from the basic citizenship requirements for LIFE legalization.

Beyond the decision of the director, the applicant has failed to establish that he meets the continuous residence requirement for Legalization under the LIFE Act.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must also 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, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

The record reflects that the applicant has submitted conflicting information and documents regarding his continuous residence in the United States that calls into question the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988. The applicant provided conflicting addresses of where he resided in the United States on the Form I-687 (application for status as a temporary

resident) dated July 28, 1982, the Form G-325A (Biographic Information) he completed on June 30, 1992, at his LIFE legalization interview in August 2006 as well as on some of the affidavits submitted on the applicant's behalf by individuals who claim to have rented an apartment to the applicant and his wife during the 1980s. The director notified the applicant of the inconsistencies in the record and offered him the opportunity to provide documentation to justify or reconcile the inconsistencies, but he failed to do so.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant consisting of letters and affidavits from individuals who claim to have employed, rented and apartment to or otherwise known the applicant in the United States during the 1980s, is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period for legalization under the LIFE Act.

For example, the letter of employment from [REDACTED] of Louis's Cleaners in Pacoima, California stating that the applicant was employed from October 1981 to August 1986, does not comport with the regulatory requirements set forth at 8 C.F.R. § 245a.2(d)(3)(i), because the letter did not provide the applicant's address during the period(s) of employment, did not indicate whether or not the information was taken from official company records, where the records are located and whether United States Citizenship and Immigration Services (USCIS) may have access to the records. Nor is the letter supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during the periods stated. For the reasons discussed above, the AAO determines that the employment document has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the letters and affidavit in the record – from individuals who claim to have rented an apartment to or otherwise known the applicant in the 1980s – all have minimalist or fill-in-the-blank formats with little personal input by the authors. Considering the length of time they claim to have known the applicant in the United States – in most cases since 1981– the authors provided remarkably few details about the applicant's life in the United States, such as where he worked, and the nature and extent of their interaction with him over the years. Nor are the letters and affidavit accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationship with the applicant in the United States during the 1980s. The letter from [REDACTED] and [REDACTED] stating that the applicant resided at [REDACTED], Los Angeles (an apartment building they managed) from 1981 to 1984 is contrary to the information provided by the applicant on the Form I-687 and other

supporting affidavits in the record. Based on the reasons discussed above, the letters and affidavit have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act. On this ground as well, therefore, the applicant has failed to establish his eligibility for legalization under the LIFE Act.

For the reasons discussed above, the appeal will be dismissed, and the application denied.

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