

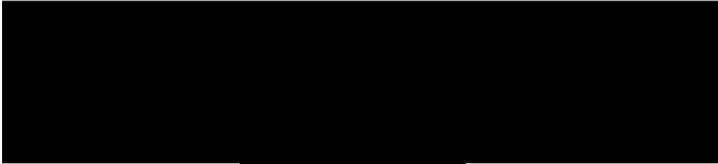
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 057 64556

Office: HOUSTON

Date: MAR 03 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, Houston, 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, counsel contends that the applicant filed a timely response to the Notice of Intent to Deny (NOID) and the response included evidence of the applicant’s completion of English language classes. Counsel submits a copy of the NOID response. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO’s assessment of the credibility, relevance and probative value of the evidence.¹

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 applicants who are at least 65 years of age or who are developmentally disabled. *See* 8 C.F.R. § 245a.17(c).

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 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

¹ 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).

by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. 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. 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 also 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. 8 C.F.R. § 245a.17(b).

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE Act application, on April 28, 2003, and again on December 8, 2003. On both occasions, the applicant failed to demonstrate an ability to write words in ordinary usage in the English language. The applicant does not dispute this fact on appeal. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 245a.3(b)(4)(iii)(A)(2). 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).

In the Notice of Decision, the director stated that the applicant failed to respond to the NOID and, therefore, denied the application. On appeal, counsel asserts that the applicant did file a timely response to the NOID and the response included evidence of the applicant's completion of

English language classes. Counsel includes a copy of a previously submitted certificate of completion in the applicant's name. The certificate indicates that the applicant completed an English as a Second Language Studies course at North Harris College, Adult Education Program, on May 7, 2002. This certificate does not meet the requirements under the regulation at 8 C.F.R. § 245a.17(a)(3). The certificate fails to state whether the course of study was for a period of one academic year. In addition, there is no indication that the curriculum included at least 40 hours of instruction in both English and United States history and government.

Based upon the foregoing, 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 affirms the director's decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

Beyond the decision of the director, an applicant is ineligible to adjust status to legal permanent resident status under LIFE Legalization if he or she is inadmissible to the United States. An applicant is inadmissible if he or she has committed three or more misdemeanor in the United States. Here, the applicant has committed three misdemeanors in the United States, which render him ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

The record reflects that on January 15, 1995, the applicant was charged with *failure to stop and give information*, in violation of the Texas Penal Code in the County Criminal Court at Law No. 9 of Harris County, Texas (██████████). On March 17, 1995, the applicant pled guilty and was convicted of *failure to stop and give information*, a misdemeanor class B conviction. The applicant was sentenced to 4 days confinement in the Harris County Jail.

The record also reflects that on January 15, 1995, the applicant was charged with *driving while intoxicated*, in violation of section 49.04 of the Texas Penal Code in the County Criminal Court at Law No. 9 of Harris County, Texas (██████████). On March 17, 1995, the applicant pled guilty and was convicted of *driving while intoxicated*, a misdemeanor class B conviction. The applicant was sentenced to 180 days confinement in the Harris County Jail probated for a period of 2 years and a fine of \$100.00.

Finally, the record reflects that on October 26, 2000, the applicant was charged with *driving while intoxicated 2nd*, in violation of section 49.04 of the Texas Penal Code in the County Court of Grimes County, Texas (Case ██████████). The applicant was convicted of *driving while intoxicated*, a misdemeanor conviction. The applicant was sentenced to 1 year confinement in the Grimes County Jail; however, said sentence was suspended for a period of 2 years probation and a fine of \$500.00.

Based on the above discussion, the applicant committed three misdemeanors and is ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a). Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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