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U.S. Citizenship and Immigration Services
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U.S. Citizenship
and Immigration
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FILE: [REDACTED]
MSC 02 039 63421

Office: NEWARK

Date:

MAY 08 2009

IN RE: Applicant: [REDACTED]

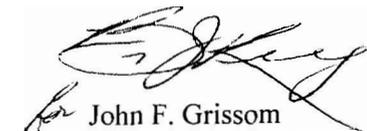
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

IN 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.


for 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, Newark, New Jersey, and is now before the Administrative Appeals Office 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 puts forth a brief disputing the director’s findings.

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).

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. 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).

The record reflects that the applicant was interviewed twice in connection with his LIFE application, on November 4, 2002, and again on April 4, 2006. On the both occasions, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. Furthermore, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

In response to a Notice of Intent to Deny issued on April 10, 2006, counsel presented a letter from a representative of Literacy Volunteers of Morris County, in Morristown, New Jersey, who indicated that the applicant was assessed by its office and was registered in its literacy program on May 4, 2006.

The regulation at, 8 C.F.R. § 245a.17(a)(3) requires that the applicant submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing the Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview. In the instant case, documentation from a state recognized, accredited learning institution should have been submitted to U.S. Citizenship and Immigration Services (USCIS) prior to or at the time of the applicant's second interview on April 4, 2006. The applicant failed to meet this requirement as the documentation from Literacy Volunteers of Morris County was presented *subsequent to* the applicant's interview.

Counsel cites no statute or regulation that compels the director to schedule the applicant for a third interview. The regulation only provides *one* opportunity after the failure of the first test. 8 C.F.R. § 245a.17(b).

On appeal, counsel asserts that she was never notified of the applicant's interview date of November 4, 2002.

The record, however, does not reflect that a Form G-28, Notice of Entry of Appearance as Attorney or Representative, accompanied the LIFE application at the time it was filed on November 8, 2001, and the box to check if G-28 is attached to represent applicant and the attorney state license number were left blank on the LIFE application. The record is silent to counsel's representation in this proceeding until January 15, 2003.¹

On appeal, counsel states that the applicant has significant cognitive learning impairments and as evidence provides a letter dated July 27, 2006, from [REDACTED] who indicated that the applicant had little education in his native country and is struggling to read and write English at this point in his life. [REDACTED] further indicated that the applicant "work hours, age and some cognitive difficulties make it difficult to learn these skills." Counsel argues that the applicant was not advised of alternative means of satisfying the requirement.

The instructions on the Form I-485, Supplement D clearly set forth the alternate options available to the applicant to establish compliance with the basic citizenship requirement. These instructions are incorporated by regulations at 8 C.F.R. § 103.2(a)(1).

The regulation at 8 C.F.R. § 312.2(2) requires all persons applying for naturalization and seeking an exception from the requirements of § 312.1(a) and paragraph (a) of this section based on the disability exceptions must submit Form N-648, Medical Certification for Disability Exceptions, to be completed by a medical or osteopathic doctor licensed to practice medicine in the United States or a clinical psychologist licensed to practice psychology in the United States (including the United States territories of Guam, Puerto Rico, and the Virgin Islands). In the instant case, counsel has not provided said form. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, [REDACTED] did not state her qualification for making this diagnosis.

The applicant was neither 65 years or older on the date of filing his LIFE application nor did he submit any evidence establishing that he was developmentally disabled as defined under 8 C.F.R. § 245a.1(v). The applicant, therefore, does not meet any of the waiver requirements defined in 8 C.F.R. § 245a.17(c). The burden is upon the applicant to prove that he meets the waiver requirements defined in 8 C.F.R. § 245a.17(c).

As previously discussed, the applicant failed to meet the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at his two interviews he did not demonstrate a minimal understanding of the English language and minimal knowledge of United States history and government.

¹ In response to a notice issued by the director on November 4, 2002, counsel submitted evidence in an attempt to establish the applicant's continuous residence in the United States during the requisite period along with a Form I-693, Medical Examination of Alien Seeking Adjustment of Status.

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 applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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).

The record contains a Form G-325A, Biographic Information, signed by the applicant, who indicated that he resided and was employed as a store manager in his native country, Morocco from 1969 to 1989. The Form G-325A undermines the credibility of the applicant’s claim to have continuously resided in the United States during the requisite period.

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