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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



U.S. Citizenship  
and Immigration  
Services

L2

JAN 13 2010

FILE:

Office: HOUSTON

Date:

MSC 02 243 67722

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.

Perry Rhew  
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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On July 30, 2004, the director determined that the applicant has not demonstrated the basic English language and citizenship skills required under the LIFE Act because he did not understand English sufficiently for meaningful testing at his first interview on April 7, 2003 and at his second interview on November 17, 2003. The director, therefore, did not adjust the status of the applicant to that of an alien lawfully admitted for temporary residence.

On appeal, counsel states further grounds will be identified and a brief will be submitted, along with any additional evidence within 30 days of receipt of the materials requested by the applicant's Freedom of Information Act (FOIA) request. The record shows the applicant's FOIA request for the record of proceedings was processed and responded to on May 1, 2009. Counsel stated he would file a brief with any additional evidence to the AAO after the FOIA request was received; however, he has not done so. Therefore, the record is considered complete.

Counsel, on appeal, does not dispute the director's determination that the applicant had appeared for testing on two occasions and had been unable to take and pass the required tests because he lacked literacy in the English language. Counsel submits Certificates of Completion showing the applicant completed two courses provided by the Houston Community College System. Northeast course titled "ESL I-Foundational Skills (CELEFS)" awarded on January 30, 2004 and an 18-hour course titled "Citizenship Preparation" awarded on February 21, 2004. Counsel asserts the applicant needs additional time to enroll in another course to complete a course of study equivalent to one academic year. Counsel asserts that in the Houston area there is not an institution that offers a course that would satisfy the one-year requirement of the regulations. Counsel did not offer any evidence in support of his assertion. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

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.

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 April 7, 2003, and again on November 17, 2003. On both occasions, the applicant was unable to understand sufficient English to be placed under oath and tested. 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).

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. It is noted that even had the applicant completed the two courses ESL I-Fundamentals 4.8 CEU’s and Citizenship Preparation prior to his

interviews for testing in 2003, he would still have been required to pass the required examinations.

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.

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