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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
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Services

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[Redacted]

FILE: [Redacted] Office: HOUSTON Date: JUL 06 2010

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:

[Redacted]

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.

Elizabeth McCormack

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 director certified his decision to the Administrative Appeals Office (AAO). The AAO will affirm the decision of the director.

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.

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 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 in connection with his LIFE Act application on August 5, 2003 and the applicant failed to demonstrate a minimal understanding of ordinary English and knowledge of civics and history of the United States. The applicant was interviewed again on October 8, 2004 and failed to establish he met the basic citizenship requirements. 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).

The applicant presented a letter from the [REDACTED] dated July 29, 2003 showing the applicant had 114 hours of English as a Second Language (ESL). The director requested additional evidence from the applicant. In response, the applicant submitted a second letter from Wharton Community Junior College dated 2004 showing the applicant had 80 hours of ESL. The director noted the discrepancy in credit hours. The director further determined that the applicant failed to establish that [REDACTED] was accredited.

On appeal, the AAO noted that the director failed to issue a Notice of Intent to Deny (NOID) as required by the Act and accordingly remanded the case. The director issued a NOID. The applicant failed to respond to the NOID. The director denied the application. The director certified the decision to the AAO. The applicant failed to present any additional evidence on certification.

It is noted that the applicant failed to establish that the [REDACTED] is a state recognized, accredited learning institution. The evidence fails to clearly indicate that the applicant's course of study is for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and that the curriculum includes at least 40 hours of instruction in both English and United States history and government as required under 8 C.F.R. § 245a.17(a)(3). The record does not contain any of the applicant's college transcripts. In order to satisfy the alternative to the basic citizenship skills requirement, such evidence would have to be submitted prior to or at the time of the applicant's second interview. 8 C.F.R. § 245a.17(a)(3).

The applicant has failed to establish he met the basic citizenship requirements.

ORDER: The decision of the director is affirmed. The application is denied. This decision constitutes a final notice of ineligibility.