



[REDACTED]

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Date: **DEC 08 2012** Office: HOUSTON

FILE: [REDACTED]

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 [or Records] 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 Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Houston District Director and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded.

The director denied the application, finding the applicant had failed to establish that he satisfied the “basic citizenship skills” requirement of section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel requested a copy of the record of proceedings. The request was processed on September 29, 2012 (NRC2012076462).

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 in connection with his LIFE Act application on May 5, 2003. According to the notes of the interviewing officer, the applicant failed to demonstrate a minimal understanding of ordinary English and knowledge of civics and history of the United States. The notes state: "2/4/04 applicant failed civics test. Did not understand sufficient English for interview to be conducted." The record lacks the civics test results. Even if the applicant lacked oral English proficiency, he would be given the opportunity to take the written English and civics tests.

The applicant was scheduled to be interviewed for a second time on February 4, 2004. Notes in the file indicate that the applicant failed the tests again. The interviewing officer wrote: "deny - 2x failed test." Again, the actual test results are missing from the file. In the absence of the test results, the AAO cannot evaluate the merits of the appeal.

Accordingly, the director's decision is withdrawn and the case is remanded for rescheduling of interviews. The applicant may present evidence that he meets the English and civics requirement exceptions but must present such evidence on or before the date(s) of his interview(s). He must present such evidence no later than the date of the applicant's second interview.

ORDER: The director's decision denying the LIFE Act application is withdrawn. The application is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the applicant, is to be certified to the Administrative Appeals Office for review.