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Date: **MAR 31 2005**

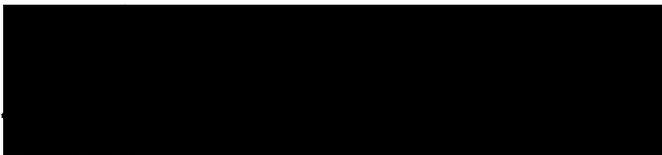
IN RE:

Applicant:



APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status (legalization) was denied by the Director, Northern Regional Processing Facility, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant effected his deportation on November 4, 1985. The director noted that the applicant was outside of the United States under an order of deportation after January 1, 1982, and therefore did not reside continuously in the United States since such date.

On appeal, counsel agrees that the applicant departed on that date, but maintains that it was a voluntary departure within the period authorized by the Immigration and Naturalization Service.

An applicant for temporary residence must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. 1255a(a)(2). An alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside of the United States under an order of deportation. Section 245A(g)(2)(B)(i) of the Act, 8 U.S.C. 1255(g)(2)(b)(i).

In proceedings on August 1, 1985, the immigration judge at Chicago ordered the applicant to be deported to Mexico, unless he departed the United States by November 1, 1985. On October 31, the period of voluntary departure was extended through November 3, based on the applicant's presentation of a plane ticket showing he would depart on November 2. However, the applicant departed on November 4. Therefore, he "self-deported" pursuant to former 8 C.F.R. § 243.5, now 8 C.F.R. § 241.7. That regulation states that any alien who departed the United States while an order of deportation was outstanding is considered to have been deported in pursuance of law, except that an alien who departed before the expiration of the voluntary departure time granted in connection with an alternate order of deportation is not considered to have been deported.

Counsel states that, when the applicant came to the immigration office on October 31 and requested an extension of voluntary departure, he presented a ticket for a November 4 departure, and that the officer simply erred in noting in the file that the voluntary departure period was extended only to November 3. Counsel has provided a photocopy of such November 4 ticket. Nevertheless, the record also contains a copy of a ticket for November 2, and the deportation officer's notes indicating that the applicant appeared on October 31 with a ticket for November 2, and that the officer granted the extension of voluntary departure to November 3, 1985. The record supports the director's finding that the applicant simply did not depart on or before November 3, the last day of the voluntary departure period. Therefore, he effected his deportation. Because of that, he cannot be found to have resided continuously in the United States for the requisite period. On that basis, he is statutorily ineligible for temporary residence.

Congress provided no relief in the legalization program for failure to maintain continuous residence due to a departure under an order of deportation. Relief is provided in the Act for absences based on factors other than deportation, namely absences due to emergencies and absences approved under the advance parole provisions. Clearly, with respect to maintenance of continuous residence, it was not congressional intent to provide relief for absences under an order of deportation

General grounds of inadmissibility are set forth in section 212(a) of the Act, and relate to any alien seeking a visa or admission into the United States, or adjustment of status. The applicant is inadmissible under section 212(a)(9)(A)(ii) for having been deported and having returned to the United States without authorization. An alien's inadmissibility under section 212(a) of the Act is an entirely separate issue from the continuous residence issue discussed above.

In summary, the applicant was out of the United States after January 1, 1982 under an order of deportation, and cannot be granted temporary residence for two reasons. First and foremost, he failed to maintain continuous residence, and there is no waiver available. Therefore, he is ineligible for temporary residence. Secondly, he is inadmissible under section 212(a)(9)(A)(ii) of the Act as an alien who was deported and returned without permission.

The applicant was deported on November 4, 1985 and therefore did not maintain continuous residence as required by section 245A(a)(2) of the Act. Furthermore, he is inadmissible under section 212(a)(9)(A)(ii) of the Act. He remains ineligible for temporary residence.

ORDER: The appeal is dismissed.