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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: Nebraska Service Center

Date: MAY 26 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 and certified your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status (legalization) was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on certification. The decision will be reversed.

The application was originally denied by the Director, Northern Regional Processing Facility. An appeal of that decision was dismissed. The Director, Nebraska Service Center granted a motion to reopen that was recently filed by the applicant pursuant to a class action lawsuit entitled *Proyecto San Pablo v. INS*, No. Civ 89-456-TUC-WDB (D. Ariz.). The decision in that case allows an alien whose application was denied because he had been outside of the United States after January 1, 1982 under an order of deportation to have his application reopened.

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).

On October 9, 1985 the immigration judge at Chicago issued an order granting [REDACTED] the privilege of voluntarily departing the United States by April 9, 1986, and stipulating that he would be deported should he not depart by that date. The applicant departed on April 26, 1986. According to the center director, the applicant self-deported under the former 8 C.F.R. § 243.5. That regulation stated that any alien who departed the United States while an order of deportation was outstanding was 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 was not considered to have been deported.

The center director concluded 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.

Counsel contends that the applicant was not outside of the United States under a valid order of deportation, as the judge's order did not show the applicant's name but rather his brother's name. Counsel also points out that the district director's notices to the alien during this 1985-86 period contained the applicant's brother's first name. The applicant and counsel maintain that this led to confusion, which resulted in the applicant's failure to comply with the grant of voluntary departure.

Counsel is correct. The applicant's name is [REDACTED]. His brother's name is [REDACTED] and that is the name that appeared on the judge's order. Form I-166, Form I-294 and Form I-205 (Warrant Of Deportation), later issued by the District Director, Chicago on April 18, 1986, showed the alien's name to be [REDACTED], incorporating both brothers' first names. Given these factors, the applicant's claim that he believed at one point that these documents applied to his brother, who shared the same address, cannot easily be dismissed.

It is reiterated that the judges' order of deportation did not contain the applicant's name. Therefore, it cannot be concluded that the applicant departed the United States under an order of deportation. The applicant's brief absence of twenty days did not interrupt his continuous residence.

General grounds of inadmissibility, set forth in section 212(a) of the Act, apply to any alien seeking a visa or admission into the United States, or adjustment of status. The director also determined the applicant is inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. 1182(a)(9)(ii)(II), for having been deported and having returned to the United States without authorization. However, because we have concluded that the applicant was not deported, he is not inadmissible under that ground. Nor are there any other grounds of inadmissibility, or ineligibility for temporary residence, apparent.

ORDER: The director's decision is reversed, and the application for temporary residence is granted. The center director shall advise the applicant as to the procedure for applying for adjustment to permanent residence within the legalization program. Furthermore, the appropriate director should adjudicate the unrelated pending applications for permanent residence and permission to reapply.