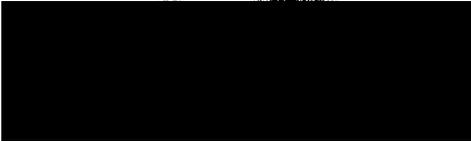


**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



41

FILE:



Office: California Service Center

Date: **NOV 15 2005**

IN RE:

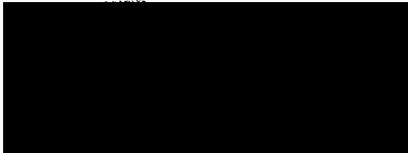
Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant was deported on December 8, 1983. 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 initially stated that the applicant left the United States voluntarily. After receiving a copy of the record, counsel conceded that the applicant was deported, and stated that the applicant may have believed that he left voluntarily. Counsel maintains that the immigration judge did not properly consider the applicant's "extreme hardship" situation, and that he therefore wrongly denied suspension of deportation. She also contends that the ameliorative nature of the legalization program should dictate that aliens who were unlucky enough to be apprehended and deported should not suffer further.

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).

Because of the deportation, the applicant did not reside continuously in the United States as required.

Counsel states that the above section of law, as interpreted by Citizenship and Immigration Services (CIS), punishes aliens who complied with deportation orders, and rewards those who disobeyed such orders. She contends that the interpretation held by CIS is unfair and unconstitutional, and could not be consistent with congressional intent. However, the law clearly states that those aliens who were *outside of the United States* under an order of deportation did not maintain continuous residence. Counsel has not cited any judicial ruling that finds that section of law to be unconstitutional, or CIS's interpretation and application of the law to be incorrect.

Counsel maintains that Citizenship and Immigration Services, in this proceeding, has the authority to review prior actions of the immigration judge. She contends that a review of the deportation proceedings will result in a finding that the applicant was unlawfully deported. However, it is not within the authority of this office to pass judgment on judicial proceedings. The claim that the order of deportation itself may now be reviewed or essentially appealed in this proceeding cannot be accepted. The deportation order of the immigration judge could have been appealed at the time to the Board of Immigration Appeals, but the applicant failed to do so.

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)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(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, which may be waived, 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)(II) of the Act as an alien who was deported and returned without permission. The applicant did not file a waiver application for this inadmissibility.

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

ORDER: The appeal is dismissed.