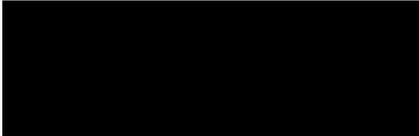


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invasion of personal privacy**



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



LI

FILE:



Office: California Service Center

Date: **SEP 27 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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally 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 termination of temporary resident status by the Director, Western Service Center is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director concluded the applicant was inadmissible to the United States for, without authorization, returning to the United States after deportation. The director terminated the applicant's temporary resident status because the applicant did not file an application for waiver of inadmissibility. It is noted that the director incorrectly cited section 212(a)(6)(B) of the Act as the section relating to the applicant's inadmissibility. That section relates to aliens who did not report for hearings.

On his duplicate appeal, the applicant points out that the individual who assisted him originally on appeal is no longer available. The applicant does not address the basis of termination, or file a waiver application.

Section 212(a)(17) of the Act, since modified, stated any alien is inadmissible who had been deported and attempted entry into the United States within five years without permission of the Attorney General. Section 212(a)(9)(A)(ii)(II), the current section, provides for inadmissibility for *ten* years after deportation. Because the applicant was deported in 1977, the earlier five-year bar applies to this case.

The applicant indicated on his application for temporary residence that he resided in the United States since 1977 without interruption, which means he returned to the United States shortly after his September 13, 1977 deportation. Thus, he was inadmissible at entry, and remains inadmissible, for having reentered the United States without authorization within five years after deportation. Pursuant to section 245A(d)(2)(B) of the Act, such inadmissibility may be waived.

The applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act. This section renders an alien inadmissible if he seeks, or sought, to procure a benefit by misrepresentation. On the application for temporary residence, filed in 1988, the applicant indicated that he had no prior record with the Immigration and Naturalization Service. Because he had been deported in 1977, his claim to have had no prior record constitutes misrepresentation. This inadmissibility may also be waived.

Section 245A(a)(4)(A) of the Act requires an alien to establish that he is *admissible* as an immigrant to the United States. The applicant is inadmissible under two grounds, as stated above. He has never filed a waiver application, even though he could have done so upon receiving the notice of intent to terminate, or when he received the termination notice, or on appeal.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.