



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: **AUG 28 2006**

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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, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status (legalization) was denied by the Director, Western Service Center. It is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant was deported on January 26, 1984. 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, prior counsel claimed the applicant was given administrative voluntary departure prior to the commencement of a hearing. He asserted the applicant was not removed from the United States under an order of deportation. However, neither the applicant nor current counsel has made such claim.

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. § 1255a(g)(2)(B)(i).

In proceedings on January 26, 1984, the special inquiry officer (immigration judge) at El Centro, California ordered the applicant to be deported to Mexico. The applicant was deported that same day. These actions were documented on Form I-221S, Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien. The applicant was not the beneficiary of a grant of voluntary departure.

Because of the deportation, the applicant did not reside continuously in the United States as required. 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. An application for waiver of inadmissibility was filed. However, that application has been denied. Even if that inadmissibility had been waived, it would have no effect on his ineligibility for temporary residence, because he failed to maintain continuous residence.

Finally, it is noted that the applicant was convicted on January 23, 1984 of the misdemeanor offense of 8 U.S.C. § 1325, knowingly, willfully, and unlawfully entering the United States at a time or place not designated by immigration officers of the United States. Also, although the official court disposition is not included in this record, the applicant was apparently convicted of burglary on December 2, 1982, which may have been a felony offense. An alien is ineligible for temporary residence if he has been convicted of a felony, or three or more misdemeanors committed in the United States. 8 C.F.R. § 245a.2(c)(1). It appears the applicant may be ineligible for temporary residence due to a felony conviction. This issue need not be resolved, as he is otherwise ineligible for temporary residence as discussed above.

ORDER: The appeal is dismissed.