



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
XHO-88-006-03058

Office: CALIFORNIA SERVICE CENTER

Date: AUG 01 2008

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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.

Mari Johnson

S Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, California Service Center, is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant was deported on January 18, 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, the applicant stated that he did not believe a final order of deportation had been entered against him. He requested the opportunity to file a waiver application. He also requested a copy of the record. Although his request was complied with, neither he nor counsel provided any further statement or evidence regarding the issue of maintenance of continuous residence.

Almost five years later, the applicant filed a waiver application with the Director, Nebraska Service Center, upon receiving a letter from that director authorizing him to file a motion to reopen this temporary residence (legalization) matter under *Proyecto San Pablo v. INS*, No. Civ. 89-456-TUC-WDB (D. Ariz.). Because the applicant did not actually file the motion to reopen, that director administratively closed out the waiver application, which was meant to be filed with a motion to reopen.

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).

The record contains Form I-221S, Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien. On it is the stamped, signed January 18, 1983 order of the Special Inquiry Officer, ordering the applicant to be deported to Mexico. The form also contains the stamped and signed notations of the District Director, Los Angeles, demonstrating the warrant of deportation was executed on that date. 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. Thus, had the Director, Nebraska Service Center, adjudicated the waiver application, the applicant would still remain ineligible for temporary residence due to the failure to reside continuously in the United States.

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. Even if that inadmissibility were to be waived, it would have no effect on his ineligibility for temporary residence, because he failed to maintain continuous residence.

ORDER: The appeal is dismissed. The Director, California Service Center, shall now complete the adjudication of the application for adjustment to permanent residence, Form I-698.