



U.S. Citizenship
and Immigration
Services

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PUBUCCOPY



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FILE: [REDACTED]
XSD 88 16601040

Office: CALIFORNIA SERVICE CENTER

Date: MAY 12 2006

INRE: 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: Self-represented

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

grant of voluntary departure rather than being deported when he departed the United States on May 24, 1985, is clearly erroneous.

The applicant contends that he remained in Mexico for less than six hours before returning to the United States. However, the length of the applicant's absence is irrelevant in determining that the applicant was deported from the United States after January 1, 1982, and, therefore did not reside continuously in the United States since such date.

General grounds of inadmissibility are set forth in section 212(a) of the Act, and relate to any alien seeking a visa, 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. He has not requested a waiver of this inadmissibility.

ORDER: The appeal is dismissed.