



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

XSD-87-037-3031

Office: CALIFORNIA SERVICE CENTER

Date: MAY 24 2006

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

The applicant was deported on March 23, 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, the applicant states that he departed the United States on December 16, 1983, the last day of his voluntary departure period, and asserts that he therefore should not have been subsequently deported. He claims that the immigration officers at the United States port of entry deliberately did not stamp his documents to show he left the country voluntarily on December 16, 1983. The applicant points out that, when he later applied for temporary residence, he willfully disclosed his prior alien registration number in order that the matter of his deportation could be reviewed.

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 September 16, 1983, the immigration judge at San Diego ordered the applicant to be deported to Mexico unless he departed the United States by December 16, 1983. The applicant claims he departed on that date. He states he first stopped in the U.S. Immigration and Naturalization Service (INS) office at the San Ysidro, California port of entry in order to get his documents stamped, which would verify his departure. He indicates the immigration officers would not cooperate in that endeavor, and escorted him into Mexico without stamping the documents. The applicant explains that he rushed to the airport in Tijuana, Mexico in order to catch his flight to Mexico City, and he provides a photocopy of an airline ticket in his name, for a flight from Tijuana to Mexico City, which was issued on December 16, 1983. He adds that he attempted to reenter the United States unlawfully around January 15, 1984, but was detained and removed. As evidence of this he furnishes a photocopy of Form I-274, seemingly showing he was processed by INS on January 15 or 19 of 1984. Finally, he explains that he reentered the United States illegally on January 20, 1984, and remained here until he was deported on March 23, 1984, as the deportation officers did not believe that he had departed voluntarily in a timely manner.

The applicant provides a copy of a March 21, 1984 letter from the attorney who represented him during the deportation proceedings. That attorney stated that it was his information and belief that the applicant departed the United States on December 16, 1983 and then flew from Tijuana to Mexico City. He further stated that he was in the process of contacting the airline for a customer list to establish the applicant was in Mexico on December 16. No such list has ever been submitted to this record. Nor are there any corroborative statements in the record as to the applicant's claim, or contemporaneous evidence that he was in Mexico on that date, other than a ticket that does not actually establish that it was used by the applicant. If the applicant were truly in Mexico on that date, he might have been able to secure proof of his presence from the U.S. Consulate in Tijuana, or the U.S. Embassy in Mexico City.

The applicant did not establish to the satisfaction of the district director in 1984 that he had departed voluntarily, and he was therefore deported. It was the responsibility of the applicant to have both complied with the grant of voluntary departure and to have demonstrated his compliance by reporting to government officials at the border or the embassy or consulate. While the applicant states that he did so, there is insufficient evidence in the record to lead to a conclusion that he timely complied with the departure order.

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. **No waiver application has been filed.** 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.