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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



XVN-88-129-3095

Office: CALIFORNIA SERVICE CENTER

Date: OCT 10 2006

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 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 "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant was deported on April 22, 1982. 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 his disagreement with the decision, and requested a copy of the file. Although his request was complied with, he did not provide any further statement.

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).

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. The Director, Western Regional Processing Facility, did grant the applicant a waiver of this inadmissibility on May 17, 1989.

The applicant was deported on April 22, 1982. In spite of the fact that a waiver of *inadmissibility* was approved, the applicant did not maintain *continuous residence* as required by section 245A(a)(2) of the Act. He remains ineligible for temporary residence.

**ORDER:** The appeal is dismissed.