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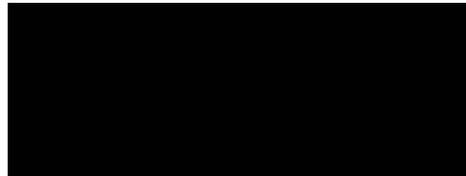
Office: Nebraska Service Center

Date: OCT 31 2006

XPD-88-047-2032

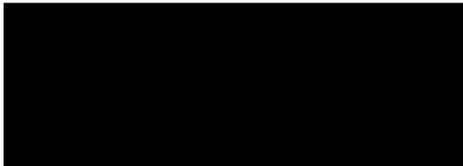
IN RE:

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 and certified your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status (legalization) was denied by the District Director, Portland, Oregon. The Director, Nebraska Service Center, then granted a motion to reopen that was filed by the applicant pursuant to a class action lawsuit entitled *Proyecto San Pablo v. INS*, No. Civ 89-456-TUC-WDB (D. Ariz.). The decision in that case allows an alien whose application was denied because he had been outside of the United States after January 1, 1982 under an order of deportation to have his application reopened. The Director, Nebraska Service Center, has now denied the application, and certified his decision to the Administrative Appeals Office (AAO). The decision will be affirmed.

The applicant was deported on May 31, 1985 and on February 6, 1987. Both directors noted the applicant was outside of the United States under orders of deportation after January 1, 1982, and therefore did not reside continuously in the United States since such date. Neither counsel nor the applicant has responded to the certified decision.

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 deportations, the applicant did not reside continuously in the United States for the requisite period. He is therefore statutorily ineligible for temporary residence on that basis.

Congress set forth, at section 245A(d)(2) of the Act, 8 U.S.C. § 1255a(d)(2), a provision to waive certain *grounds of inadmissibility* under section 212(a) of the Act, 8 U.S.C. § 1182(a). Section 245A(g)(2) of the Act, concerning *continuous residence*, is a separate section unrelated to the waiver provisions. 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, specifically absences that were prolonged because of 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. Although the applicant's failure to maintain continuous residence, and his inadmissibility for having been deported and having returned without authorization, are both predicated on the deportation, a waiver is possible only for the inadmissibility under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II).

The applicant was out of the United States after January 1, 1982 under an order of deportation, and cannot be granted temporary residence for numerous 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 on May 31, 1985 and on February 6, 1987, and returned to the United States without permission. Additionally, subsequent to the filing of this temporary residence application, the applicant was deported from the United States on April 3, 1995 and on July 8, 1995. His inadmissibility for having been deported and having returned without authorization may be waived. The applicant filed a waiver application in an effort to overcome such inadmissibility. That waiver application was denied by the director, and the decision was affirmed by the AAO in a separate decision.

The applicant was deported on May 31, 1985, and on February 6, 1987, and therefore did not maintain continuous residence as required by section 245A(a)(2) of the Act. He remains ineligible for temporary residence, and inadmissible under section 212(a)(9)(A)(ii)(II).

It is also noted that the applicant was arrested for the misdemeanor offenses of *Driving Under the Influence* on December 25, 1990; *Assault 4, Malicious Mischief 3, and Failure to Comply* on February 22, 1994; and *Driving Without a License* on February 29, 2000. He was later convicted of these five misdemeanors. Further, he was convicted of the misdemeanor offense of *Communication with a Minor for Immoral Purposes*, section 9.68A.090 of the Revised Code of Washington, case number [REDACTED], on January 27, 1987. The applicant's six misdemeanors render him ineligible for temporary residence, as any alien convicted of at least three misdemeanors in the United States is ineligible. See Section 245A(a)(4)(B) of the Act, 8 U.S.C. § 1255a(a)(4)(B).

Also, the following charges were dismissed: *Assault 4, Domestic*, on June 25, 1995 and on November 1, 1995, and *Driving While License Suspended or Revoked*, November 1, 1995. The applicant was arrested for *Failure to Comply* on June 6, 1992, but no charge was filed. The dispositions of *Failure to Comply* charges on June 10, 1992 and on March 15, 1995 are unknown.

ORDER: The director's decision is affirmed. This decision constitutes a final notice of ineligibility.