

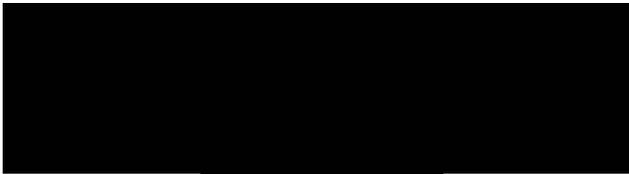


U.S. Citizenship  
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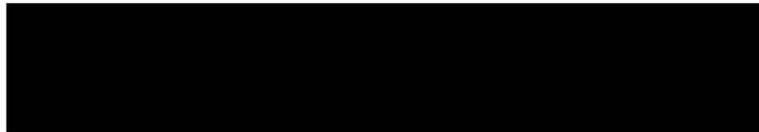


FILE: [Redacted]  
XPO 88 155 7049

Office: CALIFORNIA SERVICE CENTER

Date: APR 17 2007

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:



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

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

The director denied the application because the applicant was unable to establish the requisite continuous residence in the United States due to her deportation from the United States in 1983.

The applicant filed her Form I-694, Notice of Appeal, on March 7, 1994 after being informed that her application had been denied, but before the director's April 1, 1998 decision denying the application was issued. Accordingly, the applicant was unable to address the ground for denial on her Form I-694. However, in his April 1, 1998 notice, the director informed the applicant that her appeal was still in effect and that she had 30 days to supplement the appeal. To date, over eight years later, the AAO has received nothing further from the applicant or counsel in support of the appeal.

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)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A). 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 as a result of a departure 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 in this case shows that an immigration judge ordered the applicant deported from the United States to Mexico on February 7, 1983 and that the applicant waived appeal of the deportation order. The record also contains an executed warrant for deportation, which shows that the applicant was deported from the United States on June 2, 1983, nearly five years before her application for temporary resident status was filed. Accordingly, the applicant was outside of the United States due to a departure under an order of deportation and she consequently did not reside continuously in the United States, as required by section 245A(a)(2)(A) of the Act. On appeal, the applicant does not contest her deportation or otherwise address the ground for denial.

Beyond the director's decision, the applicant is also ineligible for temporary resident status because she is inadmissible to the United States. Section 245A(a)(4)(A) of the Act requires an alien to establish that he or she is admissible to the United States as an immigrant in order to be eligible for temporary resident status. Section 212(a)(9)(A)(ii)(II) of the Act renders inadmissible aliens who departed the United States while an order of removal was outstanding and who seek admission within 10 years of the date of the alien's departure. Section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II). Although this ground of inadmissibility may be waived pursuant to section 245A(d)(2)(B) of the Act, the record does not indicate that the applicant ever applied for or was granted such a waiver. Accordingly, the applicant is also ineligible for temporary resident status due to her inadmissibility as an alien previously removed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The applicant has not established that she resided continuously in the United States in an unlawful status since before January 1, 1982 and through the date her application was filed. Consequently, the applicant is ineligible for temporary resident status pursuant to sections 245A(a)(2)(A) and 245A(g)(2)(B)(i) of the Act. The applicant has also failed to establish that she is admissible to the United States as an immigrant and is further ineligible for temporary resident status pursuant to section 245A(a)(4)(A) of the Act. Accordingly, the appeal must be dismissed.

**ORDER:** The appeal is dismissed.