



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
XEM 88 526 5002

Office: CALIFORNIA SERVICE CENTER

Date: FEB 26 2007

IN RE: Applicant: [REDACTED]

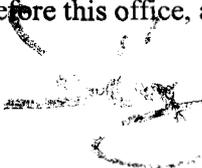
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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 his deportation from the United States in 1984.

On appeal, counsel claims that the applicant's deportation "violated his due process" and that the applicant should be permitted to reapply for admission under former section 212(a)(17) of the Act and to apply for a waiver of his inadmissibility under section 245A(d)(2)(B) of the Act.

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 the petitioner was ordered deported from the United States on January 19, 1984 and that the applicant waived appeal of the deportation order. The record further documents that the petitioner was deported from California to Mexico on January 19, 1984, over three years before his 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 he consequently did not reside continuously in the United States, as required by section 245A(a)(2)(A) of the Act.

On appeal, counsel claims that the conduct of the applicant's deportation hearing "violated his due process." **We lack jurisdiction to review this claim.** The AAO exercises appellate jurisdiction only over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). The AAO is without authority to review decisions of an immigration judge made in deportation or removal proceedings. Consequently, the AAO cannot address the applicant's collateral attack of the immigration judge's decision.

Counsel also claims that the applicant should be allowed to reapply for admission despite his deportation. However, the record contains no evidence that the applicant has applied for permission to reapply for admission to the United States, pursuant to section 212(a)(9)(A)(iii) of the Act and the corresponding regulation at 8 C.F.R. § 212.2, and that he was granted such admission *nunc pro tunc* to the date of his reentry after deportation.

Beyond the director's decision, the applicant is also ineligible for temporary resident status because he 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, despite counsel's contention on appeal that he should be allowed to file such a waiver. Accordingly, the applicant is also ineligible for temporary resident status due to his 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 he resided continuously in the United States in an unlawful status since January 1, 1982 and through the date his 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 he 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.