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U.S. Citizenship
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Services

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FILE:

XPB 88 525 3090

Office: CALIFORNIA SERVICE CENTER

JAN 18 2007
Date:

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 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 (legalization) was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was deported on December 18, 1984. The director noted 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 that date.

On appeal, counsel for the applicant asserts that the applicant's deportation in 1984 does not break her continuous residence in the United States "for 245a purposes." Counsel indicates that a brief will be submitted. To date, Citizenship and Immigration Services (CIS) has not received a brief or any additional evidence from counsel or from the applicant. Therefore, the record will be considered complete.

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 her deportation, the applicant did not reside continuously in the United States as required.

Congress provided no relief in the legalization program, even for humanitarian reasons, 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, she failed to maintain continuous residence, and there is no waiver available. Therefore, she is ineligible for temporary residence. Secondly, she is inadmissible under section 212(a)(9)(A)(ii)(II) of the Act as an alien who was deported and returned without permission. CIS computer records indicate that in a different proceeding the applicant filed a Form I-690, Application for Waiver of Ground of

Inadmissibility, with the Nebraska Service Center on September 11, 2006, under receipt number LIN 06 260 50468. To date, the waiver application has not been adjudicated; however, even if the applicant were to be granted a waiver of this ground of inadmissibility, she would remain ineligible for temporary resident status due to her failure to reside continuously in the United States during the qualifying period.

ORDER: The appeal is dismissed.