

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MAR 08 2007

FILE:

XAH 88 017 5040

Office: CALIFORNIA SERVICE CENTER

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:

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.


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 (AAO) on appeal. The appeal will be dismissed.

The applicant was deported from the United States to Mexico on December 2, 1983. 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 such date.

On appeal, the applicant concedes that he was deported to Mexico in December 1983, but states that he was only in Mexico for one week before he re-entered the United States.

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 his 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, 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 and returned without permission. The applicant has not applied for a waiver of grounds of inadmissibility; however, even if he had applied for and been granted such a waiver, he would remain ineligible for temporary resident status because of his failure to reside continuously in the United States.

It is noted that the applicant's 2005 Federal Bureau of Investigation (FBI) fingerprint results report revealed the following offenses:

1. On March 24, 1994, the applicant was arrested in Chicago, Illinois, and charged with possessed of a narcotic controlled substance.
2. On February 13, 2000, the applicant was arrested in Norwalk, California, and charged with driving under the influence of alcohol and driving under the influence of alcohol with a blood alcohol content of 0.08% or greater.
3. On December 15, 2002, the applicant was arrested in Norwalk, California, and charged with driving under the influence of alcohol.
4. On February 28, 2003, the applicant was arrested in Norwalk, California, and charged with driving under the influence of alcohol with a blood alcohol content of 0.08% or greater.

These arrests must be addressed in any further proceeding before Citizenship and Immigration Services (CIS).

ORDER: The appeal is dismissed.