



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

LI



FILE: [REDACTED]  
XDE 88 011 3026

Office: NEBRASKA SERVICE CENTER

Date: MAR 15 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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the application for temporary resident status and the matter 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 in 1985.

On appeal, the applicant claims that he did not leave the United States under a final deportation order in 1985.<sup>1</sup>

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 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 on August 29, 1984, an immigration judge granted the applicant voluntary departure by November 28, 1984 with an alternate order of deportation to Mexico if the applicant did not leave the United States by that date. On his Form I-687, Application for Status as a Temporary Resident, the applicant stated that he left the United States in February 1985 to visit his grandmother in Mexico.

Although the applicant reserved appeal of the immigration judge's August 29, 1984 order, the record contains no evidence that the applicant actually filed such an appeal. Even if the applicant properly filed an appeal of the immigration judge's order that was pending at the time he left the United States in 1985, his departure would have constituted a withdrawal of the appeal and the immigration judge's order became final as of the date it was issued on August 29, 1984. See 8 C.F.R. § 1003.4 (1997); 8 C.F.R. § 3.4 (1985). The record contains no evidence that the applicant left the United States by November 28, 1984 in compliance with the grant of voluntary departure. Accordingly, the applicant's departure in February 1985 after the expiration of the voluntary departure period invoked the immigration judge's alternate order of deportation and the applicant was outside of the United States as a result of a departure under an order of deportation. Consequently, the applicant did not reside continuously in the United States, as required by section 245A(a)(2)(A) of the Act.

The applicant may also be 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

<sup>1</sup> The attorney [REDACTED] previously represented the applicant. On January 7, 2005, the Colorado Supreme Court disbarred [REDACTED] from the practice of law, effective February 7, 2005. To date, [REDACTED] has not been reinstated. Accordingly, we do not recognize Mr. [REDACTED] as the applicant's representative in this proceeding.

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). This ground of inadmissibility may be waived pursuant to section 245A(d)(2)(B) of the Act. The record contains a Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, which the applicant filed with the Nebraska Service Center on March 27, 1998. However, the Nebraska Service Center did not adjudicate the application.

Even if the applicant's Form I-212 waiver had been granted, however, the applicant would remain ineligible for temporary resident status because his departure under an order of deportation in 1985 broke the continuous residence required by section 245A(a)(2)(A) of the Act. Accordingly, the appeal must be dismissed.

**ORDER:** The appeal is dismissed.