

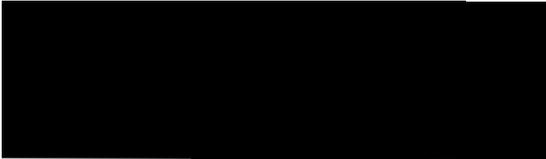


U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 20 2008**
XLA 88 516 02188

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, terminated the temporary resident status of the applicant. The applicant appealed the decision to the Administrative Appeals Office (AAO). The AAO withdrew the decision of the director and remanded the application for further consideration and action. The director issued a Notice of Intent to Terminate (NOIT) and a new decision to terminate the applicant's temporary resident status. The application is again before the AAO on appeal. The appeal will be dismissed.

On March 11, 2008, the director issued the new decision to terminate the applicant's temporary resident status, after having issued the NOIT and granting the applicant 30 days in which to respond. The director found that the applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(II) of the Immigration and Nationality Act (Act) because he was deported on June 22, 1990 and subsequently sought admission to the United States within 10 years of the date of departure. The director also found that the applicant failed to establish continuous residence in the United States as required by section 245A(a)(2)(A).

On the current appeal, counsel for the applicant stated that the applicant indicated he left the United States upon an order of voluntary departure and then re-entered without inspection. Counsel stated that the applicant was not deported and, therefore, he is not inadmissible on that basis. Counsel also stated that the evidence is sufficient to establish that the applicant has resided continuously in the United States since on or before January 1, 1982, that the Immigration Reform and Control Act of 1986 was designed to be interpreted liberally, and that the applicant's presentation of form affidavits does not negate this evidence. The applicant failed to provide additional evidence on appeal either to establish that he left the United States pursuant to a voluntary departure order or that he meets the residency requirements for temporary resident status.

The first issue for determination is whether the applicant's temporary resident status must be terminated because he was deported and, consequently, was rendered inadmissible as an immigrant and ineligible for temporary resident status pursuant to section 245A(a)(4)(A) of the Act.

Section 245A(b)(2) of the Act mandates the termination of an applicant's temporary resident status in pertinent part:

- (A) if it appears to the Secretary of Homeland Security] that the applicant was in fact not eligible for such status; [or]
- (B) if the applicant commits an act that (i) makes the applicant inadmissible to the United States as an immigrant[.]

As explained in the initial decision from the AAO, section 245A(a)(4)(A) of the Act requires an applicant 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 245A(a)(4)(A) of the Act, 8 U.S.C. § 1255a(a)(4)(A). Section 212(a)(9)(A)(ii)(II) of the Act renders inadmissible an applicant who

departed the United States while an order of removal was outstanding and who seek admission within 10 years of the date of his or her 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 requested or was granted such a waiver.

The record shows that the applicant was granted temporary resident status under section 245A of the Act on May 27, 1992. The effective date of the applicant's temporary resident status was retroactive to the date his application was filed on May 4, 1988. *See* 8 C.F.R. § 245a.2(s). On June 12, 1990, an immigration judge ordered the applicant deported to Mexico. The immigration judge noted that the applicant reserved the right to appeal, but stated that the order would be final if an appeal was not filed by June 22, 1990. The applicant abandoned his right to appeal, signed an executed warrant for his deportation to Mexico, and departed the United States on June 22, 1990. Accordingly, the deportation order of the immigration judge became final on that date. The evidence in the record indicates that the applicant was deported from the United States on June 22, 1990. The applicant has failed to provide any evidence that he was not deported on that date. Since the applicant was deported on June 22, 1990 and then sought admission to the United States within 10 years of that date, he is found to be inadmissible to the United States on this basis. Section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II). Since the applicant committed an act that made him inadmissible to the United States as an immigrant, Section 245A(b)(2) of the Act mandates the termination of his temporary resident status. Therefore, the applicant's appeal with respect to this issue is dismissed.

The second issue for determination is whether the applicant's temporary resident status must be terminated because he failed to establish that he resided in the United States throughout the requisite period and, as a result, was not eligible for temporary resident status. As explained in the initial decision of the AAO, the applicant submitted three pre-printed declarations and one notarized letter in support of his applications. The documents submitted do not provide detailed, substantive testimony sufficient to establish the applicant's entry into the United States prior to January 1, 1982 and his continuous residence since his entry through the date he applied for temporary resident status. The applicant submitted no other evidence to support his claim of continuous residence in the United States during the requisite period. Therefore, the applicant failed to establish continuous residence in the United States as required by section 245A(a)(2)(A) of the Act. His temporary resident status also must be terminated on this basis pursuant to section 245A(b)(2)(A) of the Act.

The applicant did not establish his entry into and continuous residence in the United States during the requisite period. The applicant is also inadmissible to the United States due to his deportation in 1990. Consequently, the applicant's temporary resident status must be terminated pursuant to sections 245A(b)(2)(A) and 245A(b)(2)(B)(i) of the Act.

Counsel's statements made on appeal have been considered. The applicant has presented no evidence to overcome the director's determination. As the applicant has not overcome either basis for the termination of his temporary resident status, the appeal must be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.