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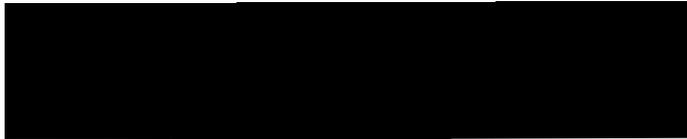
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NATIONAL BENEFITS CENTER

Date: JUN 18 200

XPO 87 081 04055

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. 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Western Regional Processing Facility, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was deported on December 9, 1983. The facility director denied the application because 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 claims that he returned to the United States within two days of his deportation from this country to Mexico on December 9, 1983.

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 Immigration and Nationality Act (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. § 1255(g)(2)(B)(i).

The Form I-296, Notice to Alien Ordered Excluded by Immigration Judge (now Notice to Alien Ordered Removed), dated December 9, 1983, reveals the judge ordered the applicant to be excluded from admission (now referred to as rendered inadmissible) into the United States and deported to Mexico. The Form I-296 also demonstrates that the applicant was deported to Mexico via foot at the port of entry at Calexico, California on December 9, 1983. There is no question that the applicant departed the United States under an order of deportation.

As a result of the deportation, the applicant did not reside continuously in the United States for the requisite period. The applicant is therefore statutorily ineligible for temporary residence on that basis pursuant to section 245A(a)(2) of the Act.

The applicant contends that he was only absent from the country for a short period of time as he returned to the United States within two days after he had been deported. However, the fact that applicant returned to this country within two days after being deported has no effect on the finding that he did not continuously reside in the United States for the requisite period as a result of his deportation.

Congress set forth, at section 245A(d)(2) of the Act, a provision to waive certain *grounds of inadmissibility* (formerly grounds of excludability) under section 212(a) of the Act. Section 245A(g)(2) of the Act, concerning *continuous residence*, is a separate section unrelated to the waiver provisions. Congress provided no relief in the legalization program 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 that were prolonged

because of 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. While the applicant's failure to maintain continuous residence, and his inadmissibility (formerly excludability) for having been deported and having returned without authorization, are both predicated on the deportation, a waiver is possible only for the inadmissibility (formerly excludability) under section 212(a)(9)(A) of the Act.

In summary, the applicant was deported from the United States after January 1, 1982, and therefore, he failed to maintain continuous residence. Consequently, he is ineligible for temporary residence as there is no waiver available to an applicant for a failure to comply with the continuous residence requirement as a result of having been deported.

The applicant was ordered excluded (now referred to as rendered inadmissible) and deported on December 9, 1983, and therefore did not maintain continuous residence as required by section 245A(a)(2) of the Act. He remains ineligible for temporary residence, and inadmissible (formerly excludable) under section 212(a)(9)(A) of the Act.

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