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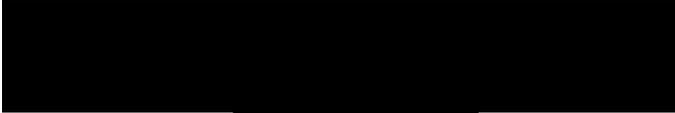
U.S. Department of Homeland Security
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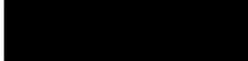
U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

NOV

XHO 88 088 04090

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. 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The procedural history of this case is unclear. The applicant filed a Form I-687 Application for Temporary Resident Status in March 1988. Two months later, the application was denied. In 1996, the director of the California Service Center wrote the applicant to advise him that his application had not been denied, but was still pending. On February 21, 2003, the Immigration and Naturalization Service, presently Citizenship and Immigration Services (“CIS”) sent notice to the applicant by certified mail of his rights under the *Proyecto San Pablo v. INS*, No. 89-00456-WDB (D. Ariz.) settlement.

On July 10, 2007, the director of the Texas Service Center issued a new decision to terminate the applicant’s temporary resident status, after having issued a Notice of Intent to Terminate (NOIT) and granting the applicant 30 days in which to respond. The NOIT indicated that the applicant had been sent certified notification of his rights to file a motion to reopen his case, and the applicant had failed to file a motion to reopen his case within the one year filing period. Considering that the application for temporary resident status was never approved, the director appears to have intended to issue a Notice of Intent to Deny (NOID) and denial, rather than a NOIT and termination of temporary resident status.

The record indicates that the applicant failed to establish continuous residence in the United States as required by section 245A(a)(2)(A) because he was deported on March 3, 1982. Former counsel requested that the applicant be granted a waiver of his inadmissibility for having been deported, indicated that the applicant had resided in the United States continuously throughout the requisite period, and submitted attestations supporting the applicant’s claim of continuous residence in the United States.

An applicant for temporary resident status 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 applicant shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the applicant 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 he was deported on March 3, 1982 and was, therefore, outside of the United States under an order of deportation during the requisite period, the applicant did not reside continuously in the United States during that period. Consequently, he is statutorily ineligible for temporary resident status on that basis.

A lack of continuous residence in such circumstances may not be waived. Congress set forth, at section 245A(d)(2) of the Act, 8 U.S.C. § 1255a(d)(2), a provision to waive certain *grounds of inadmissibility* under section 212(a) of the Act, 8 U.S.C. § 1182(a). Section 245A(g)(2) of the Act,

concerning *continuous residence*, is a separate section unrelated to the waiver provisions. Congress provided no relief for applicants for temporary resident status who fail 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, including absences that were prolonged because of emergencies and absences approved under the advance parole provisions. Although the applicant's failure to maintain continuous residence and his inadmissibility for having been deported and having returned without authorization both arise out of his deportation, a waiver is possible only for the inadmissibility under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II).

There is a logical basis for distinguishing between inadmissibility and continuous residence; not all applicants who were deported fail to meet the continuous residence requirement. An applicant who was deported in 1978 and reentered the United States before January 1, 1982 would be inadmissible because of the deportation, and yet would not be ineligible for temporary resident status based on failure to establish continuous residence. A waiver of inadmissibility in that instance would serve a useful purpose, as the applicant would then be eligible for temporary resident status.

In this instance, a waiver serves no useful purpose. The applicant was out of the United States after January 1, 1982 under an order of deportation, and therefore did not maintain continuous residence as required by section 245A(a)(2) of the Act. Consequently, he is ineligible for temporary resident status.

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