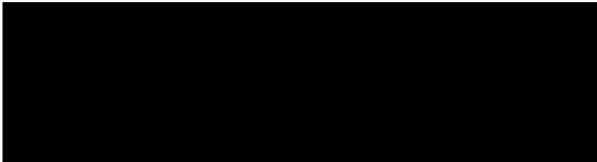


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services



L8

FILE: [REDACTED]
LIN 05 056 50250

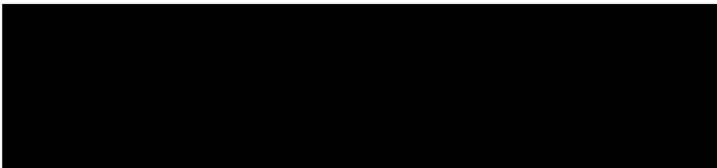
Office: Nebraska Service Center

Date: JUL 26 2006

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Inadmissibility 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. All documents have been returned
to the office that originally decided your case.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility within the legalization program was denied by the Director, Nebraska Service Center. The decision was affirmed by the Administrative Appeals Office (AAO) on certification. The AAO now reopens the matter, and will reaffirm the decision of the director.

The director denied the waiver application because the applicant was otherwise ineligible for temporary residence in the legalization program. The director determined that it would serve no purpose to grant a waiver that could not enable the applicant to gain temporary residence.

Neither the applicant nor prior counsel responded to the certified denial. On motion, counsel submits a brief, asserting that the applicant is not inadmissible under section 212(a)(9)(A)(i) of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i).¹

The applicant was ordered excluded and deported from the United States on January 6, 1984; therefore, he is inadmissible under section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), which states that alien not described in clause (i) who has been ordered removed under section 240 or any other provision of law is inadmissible. Pursuant to section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), such inadmissibility may be waived in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

The applicant has two United States citizen children, and maintains that he has resided in the United States since 1979. Regardless, the director denied the waiver application because the applicant cannot otherwise qualify for temporary residence, as he fails to meet the “continuous residence” provision of the legalization program.

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 he was deported on January 6, 1984, the applicant did not reside continuously in the United States for the requisite period. As a result, he is statutorily ineligible for temporary residence.

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 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.

¹ In a prior decision, the AAO determined that the applicant was inadmissible under section 212(a)(9)(A)(i) of the Act. This portion of the AAO’s decision dated January 6, 2006 shall be withdrawn. The issue of which subsection of section 212(a)(9) of the Act is not material to the basis of this decision to deny the waiver application.

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.

The 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. An applicant's inadmissibility under section 212(a)(9)(A)(ii)(I) for having been deported and having returned to the United States without authorization may be waived. However, an alien's inadmissibility is an entirely separate issue from the continuous residence issue discussed above. Although the applicant's failure to maintain continuous residence, and his inadmissibility for having been deported and having returned without authorization are both based on his deportation, a waiver is available only for the inadmissibility.

The question has arisen as to why, if the above interpretation is correct, the law would allow for a waiver of inadmissibility in the case of a deported alien and yet provide no waiver for a lack of continuous residence, also based on a deportation. Clearly, not all aliens who were deported in the past failed to meet the continuous residence requirement. For example, an alien who was deported in 1979 and reentered the United States before January 1, 1982 would be inadmissible because of the deportation and yet would not be ineligible for legalization on the continuous residence issue.

In support of his decision to deny the waiver application because the applicant is otherwise ineligible for legalization, the director cited *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964) and *Matter of J-F-D-*, 10 I&N Dec. 694 (Reg. Comm. 1963). While those decisions relate to applications for permission to reapply for admission after deportation, the decisions are on point and relevant to the current proceeding. In each case the Regional Commissioner found that no purpose would be served in waiving inadmissibility because the alien was ineligible for the overall benefit of lawful residence.

It is concluded that the director's decision to deny the waiver application because no purpose would be served in granting it was proper, logical and legally sound. Therefore, it shall remain undisturbed.

ORDER: The decision is reaffirmed, and the application remains denied.