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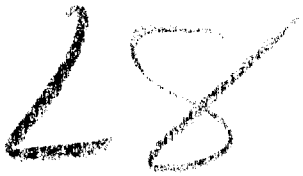
U.S. Citizenship
and Immigration
Services

[redacted]



FILE: [redacted] Office: Nebraska Service Center Date: APR 16 2005

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:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility within the legalization program was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on certification. The decision will be affirmed.

The director denied the waiver application because the applicant was otherwise ineligible for temporary residence in the legalization program. The director reasoned that there would be no purpose in granting a waiver that could not assist the applicant in gaining temporary residence.

No response to the certified denial has been received. With the waiver application, counsel pointed out that the applicant has lived in the United States since 1980. She also explained that the applicant supports his lawful permanent resident mother, and that he has seven U.S. citizen or lawful permanent resident siblings.

The applicant was deported from the United States on January 18, 1985. He is inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), which relates to aliens who were deported and reentered the United States without authorization. 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 states that he has resided in the United States since 1980. Regardless, the director denied the waiver application because the applicant cannot otherwise qualify for legalization, 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. § 1255(g)(2)(b)(i).

Because he was deported, 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.

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) for having been deported and having returned to the United States without authorization may be waived. However, an alien's inadmissibility under section 212(a) of the Act is an entirely separate issue from the continuous residence issue discussed above. While the applicant's failure

to maintain continuous residence, and his inadmissibility for having been deported and having returned without authorization, are both predicated on the deportation, a waiver is possible only for the inadmissibility.

In support of his decision to deny the waiver application because the applicant was 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). Those decisions relate to applications for permission to reapply for admission after deportation, yet 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 affirmed, and the application remains denied.