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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



LIN 04 184 52855

Office: NEBRASKA SERVICE CENTER

Date: AUG 28 2006

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. All documents have been returned  
to the office that decided and certified your case.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status (legalization) was denied by the Director, Western Service Center. An appeal of that decision has been dismissed.

The Director, Nebraska Service Center, then granted a motion to reopen that was filed by the applicant pursuant to a class action lawsuit entitled *Proyecto San Pablo v. INS*, No. Civ 89-456-TUC-WDB (D. Ariz.). The decision in that case allows an alien whose application was denied because he had been outside of the United States after January 1, 1982 under an order of deportation to have his application reopened. The Director, Nebraska Service Center, has now denied the application, and certified his decision to the Administrative Appeals Office (AAO). The decision will be affirmed.

The applicant was deported on January 26, 1984. Both directors noted that 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.

Neither counsel nor the applicant has responded to the certified denial. Earlier, counsel noted that the applicant had resided in the United States for the requisite period. He pointed out that the applicant was filing a waiver application, due to his inadmissibility for having been deported.

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).

The applicant was deported to Mexico on January 24, 1984. Because of the deportation, the applicant did not reside continuously in the United States as required. 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 applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), as an alien who was deported and returned without permission. 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. 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 under section 212(a)(9)(A)(ii)(II) of the Act.

In summary, the applicant was out of the United States after January 1, 1982 under an order of deportation, and cannot be granted temporary residence for two reasons. First and foremost, he failed to maintain continuous residence, and there is no waiver available. Therefore, he is ineligible for temporary residence. Secondly, he is inadmissible under section 212(a)(9)(A)(ii)(II) of the Act as an alien who was deported and returned without permission. That ground of inadmissibility may be waived. The applicant filed a waiver application, which has been denied. Even if it had been granted, he would remain ineligible for temporary residence due to his failure to maintain continuous residence.

Finally, it is noted that the applicant was convicted on January 23, 1984 of the misdemeanor offense of 8 U.S.C. § 1325, knowingly, willfully, and unlawfully entering the United States at a time or place not designated by immigration officers of the United States. Also, although the official court disposition is not included in this record, the applicant was apparently convicted of burglary on December 2, 1982, which may have been a felony offense. An alien is ineligible for temporary residence if he has been convicted of a felony, or three or more misdemeanors committed in the United States. 8 C.F.R. § 245a.2(c)(1). It appears the applicant may be ineligible for temporary residence due to a felony conviction. This issue need not be resolved, as he is otherwise ineligible for temporary residence as discussed above.

**ORDER:** The director's decision is affirmed. This decision constitutes a final notice of ineligibility.