



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
XPH 87 104 5035

Office: CALIFORNIA SERVICE CENTER

Date: MAR 13 2007

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant was unable to establish the requisite continuous residence in the United States due to his deportation in 1983.

On appeal, the applicant states that he returned to the United States right after his deportation and that if they were forced to separate, his family would suffer hardship.

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 as a result of a departure under an order of deportation. Section 245A(g)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(g)(2)(B)(i).

The record in this case shows that an immigration judge granted the applicant voluntary departure in lieu of deportation on or before August 7, 1983. That deadline was extended to August 19, 1983, but the applicant failed to depart by that date. The applicant waived appeal of the immigration judge's order and departed the United States on October 15, 1983, nearly four years before his application for temporary resident status was filed on September 24, 1987. Accordingly, the applicant did not reside continuously in the United States and is consequently ineligible for temporary resident status.

Beyond the director's decision, the applicant is also ineligible for temporary resident status because he is inadmissible to the United States. Section 245A(a)(4)(A) of the Act requires an alien to establish that he or she is admissible to the United States as an immigrant in order to be eligible for temporary resident status. Section 212(a)(9)(A)(ii)(II) of the Act renders inadmissible aliens who departed the United States while an order of removal was outstanding and who seek admission within 10 years of the date of the alien's departure. Section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II). Although this ground of inadmissibility may be waived pursuant to section 245A(d)(2)(B) of the Act, the record does not indicate that the applicant ever requested or was granted such a waiver. Accordingly, the applicant is ineligible for temporary resident status due to his inadmissibility as an alien previously removed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The applicant has not established that he resided continuously in the United States in an unlawful status since January 1, 1982 and through the date his application was filed. Consequently, the applicant is ineligible for temporary resident status pursuant to sections 245A(a)(A) and 245A(g)(2)(B)(i) of the Act. The applicant has also failed to establish that he is admissible to the United States as an immigrant and is



further ineligible for temporary resident status pursuant to section 245A(a)(4) of the Act. Accordingly, the appeal must be dismissed.

ORDER: The appeal is dismissed.