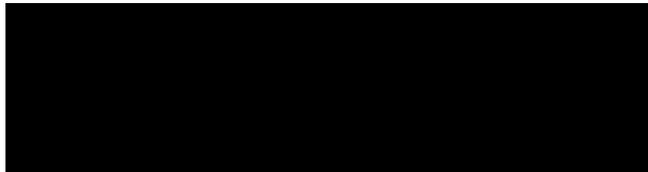




U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



L1

FILE: [REDACTED]
XSO 88 013 2051

Office: CALIFORNIA SERVICE CENTER

Date: MAR 27 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: SELF-REPRESENTED

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. 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. The matter subsequently came before the Administrative Appeals Office (AAO) on appeal and was remanded pending further litigation of *Proyecto San Pablo v. Immigration and Naturalization Service*, 784 F. Supp. 738 (D. Ariz. 1991). The matter is back before the AAO on appeal. The appeal will be dismissed.

The director determined that the applicant was deported on May 16, 1986. Accordingly, the director concluded that the applicant is ineligible to adjust his status to that of a temporary resident because his continuous residence was interrupted by an absence, which resulted from an order of deportation after January 1, 1982.

On appeal, the applicant raises constitutional challenges to the director's decision to deny his application for temporary resident status.

The first issue to be addressed is whether the applicant established his eligibility for temporary resident status under the provisions of section 245A of the Immigration and Nationality Act (Act).

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has *continuously* resided in an unlawful status in the United States from prior to January 1, 1982 through the date of filing, is admissible to the United States under the provisions of section 245A of the Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). 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 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).

In a decision dated March 2, 1999, the director properly determined that the applicant's 1986 deportation from the United States interrupted his unlawful presence after January 1, 1982 and, therefore, rendered him ineligible for temporary resident status. We affirm the director's decision to deny the application on this basis. The applicant has not overcome the basis for the director's decision.

The next issue to be resolved in this proceeding is whether the applicant's right to procedural due process was violated. Although the applicant argues that his right to procedural due process was violated, he has not shown that any violation of the regulations resulted in "substantial prejudice" to them. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The applicant has fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the applicant's case. The applicant's primary complaint is that the director denied the petition. As previously discussed, the applicant has not met its burden of proof and the denial was the proper result under the regulation. Accordingly, the applicant's claim is without merit.

The applicant also asserts his rights under the equal protection clause were violated. The AAO observes that, like the Board of Immigration Appeals, this office cannot rule on the constitutionality of laws enacted by Congress. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905 (BIA 1997); *Matter of C-*, 20 I&N Dec. 529 (BIA 1992).

Finally, the applicant states that the application of the regulation at 8 C.F.R. § 245A(g)(2) in his case is fundamentally unfair. The applicant has not demonstrated any error by the director in conducting its review of the petition. Nor has the applicant demonstrated any resultant prejudice such as would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975).

The applicant fails to specify how exactly his due process rights were violated, particularly in light of the director's communication, prior to the final decision, informing the applicant of the adverse evidence and allowing him time in which to address it. There is no indication or evidence on record to suggest that the denial, based on statutory ineligibility, in any way violated the applicant's due process rights.

Although the applicant has been afforded every opportunity to provide evidence of temporary residence, the only statements he has made on appeal consist of a general claim that Citizenship and Immigration Services (CIS) has denied him due process. The applicant has provided no statements explaining how this purported violation has occurred.

A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence. Nor has he addressed the grounds stated for denial. The appeal must therefore be dismissed.

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