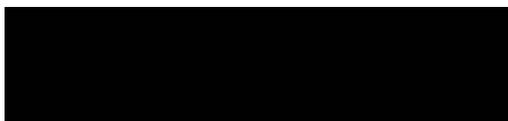




U.S. Citizenship
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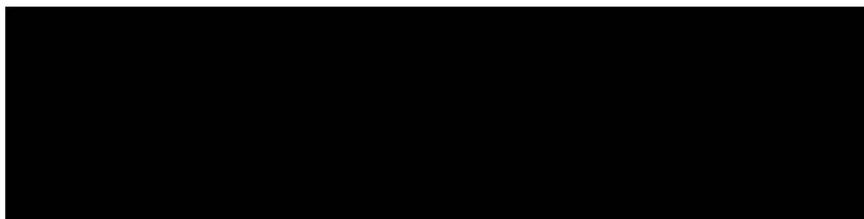
Office: California Service Center

Date: DEC 14 2006

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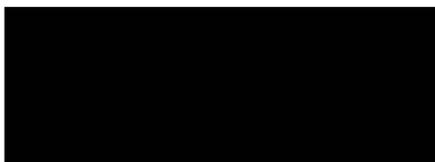
IN RE:

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 originally decided your case. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status (legalization) was originally denied by the Director, Western Regional Processing Facility. An appeal of that decision has been dismissed by the Chief, Administrative Appeals Office (AAO).

The Director, Nebraska Service Center granted a motion to reopen that was recently 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 application for temporary residence was then denied by the Director, Nebraska Service Center, and is now before the AAO on certification. The decision will be affirmed.

The applicant was deported on October 19, 1976, February 3, 1982 and June 22, 1983. Both directors noted 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. The applicant has not contested the facts of the deportations, and has not responded to the certified denial.

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 of the February 3, 1982 and June 22, 1983 deportations, the applicant did not reside continuously in the United States for the requisite period. As a result, he is statutorily ineligible for temporary residence.

Relief is provided in the Act for absences based on factors other than deportation, specifically absences that were prolonged 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.

General grounds of inadmissibility, set forth in section 212(a) of the Act, apply to any alien seeking a visa or admission into the United States, or adjustment of status. The applicant's inadmissibility under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(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 a 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 both stem from the deportation, a waiver exists 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 while providing no waiver for a lack of continuous

residence, also based on a deportation. It is noted that not all aliens who were deported in the past fail to meet the continuous residence requirement. In this case, the applicant was deported in 1976 and reentered the United States before January 1, 1982. If he had not been deported again, he would be inadmissible because of the 1976 deportation and yet would not be ineligible for legalization on the continuous residence issue. In such a case, a waiver of inadmissibility would serve a useful purpose.

In summary, the applicant was out of the United States after January 1, 1982 under two orders of deportation, and cannot be granted temporary residence for two reasons. 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 in an effort to overcome such inadmissibility. That waiver application was denied by the director, and the decision was affirmed by the AAO in a separate decision.

The applicant was deported, and therefore did not maintain continuous residence as required by section 245A(a)(2) of the Act. He remains ineligible for temporary residence.

The applicant was arrested for *Assault with Deadly Weapon* on November 5, 1977, December 29, 1977, December 2, 1981 and May 25, 1983. He was also arrested for *Carrying Knife While Loitering* and *Drunk* on December 29, 1978, *Obstructing/Resisting Police Officer* on December 2, 1981, *Kidnapping* on May 25, 1983, and *Possession of Marijuana* on May 11, 1976. The charges were dismissed in all of these cases.

The applicant was also arrested for *Burglary* on November 22, 1976; the disposition is unknown. Additionally, according to the notes of an immigration officer who interviewed him on November 13, 1978, the applicant stated that he had been charged with *Robbery* and served two months confinement. Finally, he was convicted of an unspecified immigration offense, possibly *Unlawful Entry*, 8 U.S.C. § 1325, on or around January 3, 1978, and sentenced to 30 days confinement.

Although the applicant may not be ineligible for temporary residence due to his criminal record, he remains ineligible because of the deportations.

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