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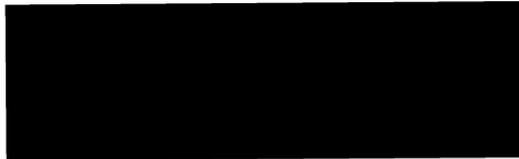
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 10 2006

XNK-87-707-2148

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:

LOU SANCHEZ  
125 WEST 4<sup>TH</sup> STREET, #125  
LOS ANGELES, CA 90013

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 applicant's temporary resident status was terminated by the Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant was deported on November 14, 1983. The director 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.

On appeal, neither the applicant nor counsel provides any statement or evidence. An unauthorized representative speculates that the applicant did not undergo a proper deportation hearing and states, *inter alia*: "If a deportation occurred to my client maybe he was called before an immigration court he was probably given a shot to put him to sleep, sedated or unconscious because he couldn't defend himself and his rights were read explained to him in a formal and proper way that can be interpreted."

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).

Form I-38, Decision of the Immigration Judge, indicates that on November 14, 1983 the Immigration Judge at El Centro, California ordered the applicant to be deported to Mexico. The form also indicates the applicant waived his appellate rights. He was deported later that day. 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 unsupported statement submitted on appeal implies the applicant was a victim of unfair treatment. Citizenship and Immigration Services, in this proceeding, has no authority to review prior actions of the immigration judge. The claim that the order of deportation itself may now be reviewed or essentially appealed in this proceeding cannot be accepted. The deportation order of the immigration judge was subject to appeal at the time to the Board of Immigration Appeals. As stated above, the applicant waived his appellate rights.

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. The applicant is inadmissible 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. An alien's inadmissibility under section 212(a) of the Act, which may be waived, is an entirely separate issue from the continuous residence issue discussed above.

In summary, the applicant was out of the United States after January 1, 1982 under an order of deportation, and is not eligible for temporary resident status for two reasons. First and foremost, he failed to maintain continuous residence, and there is no waiver available. 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. He has not requested a waiver of this inadmissibility.

**ORDER:** The appeal is dismissed. The applicant's temporary resident status is terminated. The director shall adjudicate the pending application for adjustment from temporary to permanent resident status.