

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

L1

PUBLIC COPY



FILE: [REDACTED]
XTO 88 137 1052

Office: CALIFORNIA SERVICE CENTER

Date: FEB 16 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:



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, counsel contends that the applicant's departure was voluntary and not as a result of a deportation order.

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 contains an Order to Show Cause, Notice of Hearing and Warrant for Arrest of Alien, which states that the applicant was ordered deported to Mexico on January 21, 1983 and that the applicant waived appeal of the deportation order. The document further states that the deportation order was executed and the applicant was deported to Mexico on January 21, 1983. Counsel provides no reasons and presents no evidence to rebut this record of the applicant's deportation. Accordingly, the applicant was outside of the United States as a result of his departure under an order of deportation on January 21, 1983, over five years before his Form I-687 application was filed. As the applicant did not reside continuously in the United States during the requisite period, he 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). The record shows that the applicant sought admission into the United States through his Form I-687 application five years after he departed the United States under a deportation order. Although inadmissibility under section 212(a)(9)(A)(ii)(II) of the Act 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).

Although it does not affect his eligibility for temporary resident status, we note that the record shows that on March 8, 1987, the petitioner was arrested by the Los Angeles, California Police Department under the name of [REDACTED] for theft of personal property. The disposition of this charge is unknown. The record also further shows that the applicant was arrested by the Phoenix, Arizona Police Department on March 21, 1998 for intimidation/stalking, two counts of simple assault, endangerment, second-degree assault and third-degree assault. No complaint was filed for the first three charges and the disposition of the last three charges is unknown.

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.