



U.S. Citizenship  
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Services

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FILE:

XFR 87 102 2133

Office: CALIFORNIA SERVICE CENTER

Date: FEB 26 2007

IN RE:

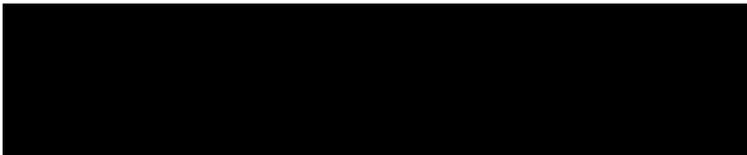
Applicant:



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 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 Director, California Service Center, denied the application for temporary resident status and the matter 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 from the United States in 1982.

On appeal, counsel claims that the denial of the application was unjust and unfair given the applicant's more than 40 years of residence in the United States.

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)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A). 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 the petitioner was ordered deported from the United States on August 17, 1982 and that the applicant waived appeal of the deportation order. The record further documents that the petitioner was deported from Calexico, California to Mexico on August 17, 1982, over five years before his application for temporary resident status was filed. Accordingly, the applicant was outside of the United States due to a departure under an order of deportation and he consequently did not reside continuously in the United States, as required by section 245A(a)(2)(A) of the Act. On appeal, counsel claims that the denial of the application is unjust and unfair, but counsel does not contest the ground for denial.

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 applied for or was granted such a waiver. Accordingly, the applicant is also 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 before 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)(2)(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)(A) of the Act. Accordingly, the appeal must be dismissed.

**ORDER:** The appeal is dismissed.