

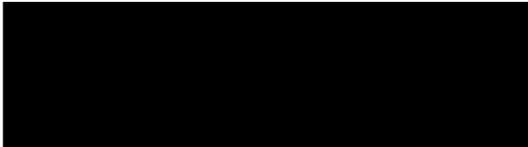


U.S. Citizenship
and Immigration
Services

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

LI

PUBLIC COPY



MAR 02 2007

FILE: [REDACTED]
XTU 88 158 1197

Office: CALIFORNIA SERVICE CENTER

Date:

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 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 (legalization) was denied by the Director, Western Regional Processing Facility. The Chief of the Legalization Appeals Unit, now the Administrative Appeals Office, subsequently remanded the case to the Director of the Western Service Center for additional processing, and the case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was deported on July 2, 1985. The director 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 that date.

On appeal, the applicant asserts that his departure from the United States under an order of deportation should not bar him from eligibility for temporary resident status.

The Chief of the Legalization Appeals Unit remanded the case to the service center director for additional processing on June 4, 1992.

On March 20, 2003, the applicant was informed of the criteria for filing a motion to reopen under *Proyecto San Pablo v. Immigration and Naturalization Service*, 784 F. Supp. 738 (D. Ariz. 1991), a class-action lawsuit. The record does not contain a response from the applicant.

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).

As stated above, the applicant was deported from the United States to Mexico on July 2, 1985. Because of his deportation, the applicant did not reside continuously in the United States as required.

Congress provided no relief in the legalization program, even for humanitarian reasons, 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.

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.

The applicant asserts on appeal that he should be allowed to apply for a waiver of grounds of inadmissibility or, alternately, to apply for permission to reapply for admission into the United States after deportation or removal. To date, the applicant has not filed an application for grounds of inadmissibility, nor has he applied for permission to re-apply. However, even had he applied for and been granted a waiver of his ground of inadmissibility or permission to reapply for admission into the United States after deportation, the applicant would remain ineligible for temporary resident status due to his failure to reside continuously in the United States.

The applicant's assertion that his departure from the United States was not related to the order of deportation is incorrect. The record contains a copy of the Immigration Judge's order of deportation dated July 2, 1985. The record also contains a copy of the Form I-205, Warrant of Deportation, bearing the verification of the applicant's deportation to Mexico at Nogales, Arizona, on July 2, 1985. The departure verification, which was signed by an immigration officer and also by the applicant, bears the applicant's right thumbprint verifying his deportation to Mexico as ordered by the Immigration Judge.

The applicant has not provided any evidence to corroborate his claim that his deportation was conducted in violation of due process. Therefore, his claim cannot be accepted.

In summary, the applicant was out of the United States after January 1, 1982, under an order of deportation, and cannot be granted temporary residence for two reasons. First and foremost, 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, and he has not applied for waiver of ground of inadmissibility.

ORDER: The appeal is dismissed.