



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
XNK 88 513 1108

Office: CALIFORNIA SERVICE CENTER

Date: MAR 05 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:

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 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 her deportation from the United States in 1987.

On appeal, the applicant claims that her deportation was unlawful.¹

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 an immigration judge ordered the applicant deported from the United States on September 23, 1987. The applicant waived appeal of the immigration judge's order and an executed warrant for deportation shows that the petitioner was deported from the United States on September 24, 1987, before her application for temporary resident status was filed in 1988. Accordingly, the applicant was outside of the United States due to a departure under an order of deportation and she consequently did not reside continuously in the United States, as required by section 245A(a)(2)(A) of the Act.

On appeal, the applicant claims that she was deported in violation of section 245A(e)(2) of the Act and the regulation at 8 C.F.R. § 245a.2(a)(2)(ii). Section 245A(e) of the Act states, in pertinent part:

Temporary stay of deportation and work authorization for certain applicants. –

* * *

(2) *During application period.*—The Attorney General shall provide that in the case of an alien who presents a prima facie application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien –

(A) may not be deported [.]

The regulation at 8 C.F.R. § 245a.2(a)(2)(ii) prescribes that an alien who is issued an Order to Show Cause (OSC) during the period from May 5, 1987 to April 4, 1988 must file an application

¹ An attorney filed the appeal. However, the attorney failed to submit a properly completed Form G-28, Notice of Entry of Appearance as Attorney. Consequently, we do not recognize the attorney as the applicant's representative in this proceeding.

for temporary residence prior to the thirty-first day after the OSC is issued. The applicant contends that because the OSC was issued on September 5, 1987 and she was deported just 19 days later, her deportation violated the above-cited sections of the Act and regulations. The applicant is misguided. Section 245A(e)(2) of the Act only prohibits the deportation of aliens who actually filed an application for temporary residence within the applicable filing period. The regulation at 8 C.F.R. § 245a.2(a)(2)(ii) prescribed a thirty-day filing period for applications for temporary residence by aliens who were issued an OSC during a certain period. The regulation did not prohibit the deportation of aliens who failed to file an application for temporary residence during the filing period. The applicant did not file an application for temporary residence until 1988, well after her thirty-day filing period had expired. Accordingly, neither section 245A(e)(2) of the Act nor the regulation at 8 C.F.R. § 245a.2(a)(2)(ii) barred her deportation.

On appeal, the applicant further contends that various actions of the immigration judge violated her constitutional right to due process and rendered her deportation illegal. We lack jurisdiction to review these claims. The AAO exercises appellate jurisdiction only over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). The AAO is without authority to review decisions of an immigration judge made in deportation or removal proceedings. Consequently, the AAO cannot address the applicant's collateral attack of the immigration judge's decision.

Beyond the director's decision, the applicant is also ineligible for temporary resident status because she 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 requested or was granted such a waiver. Accordingly, the applicant is also ineligible for temporary resident status due to her 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 she resided continuously in the United States in an unlawful status since before January 1, 1982 and through the date her 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 she 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.