



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
XVN 88 506 2058

Office: CALIFORNIA SERVICE CENTER

Date **MAR 13 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:

[REDACTED]

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, California Service Center. The Director (now Chief) of the Administrative Appeals Office (AAO) subsequently remanded the case to the Director of the Nebraska Service Center. The director affirmed the prior denial decision, and the case is now before the AAO on appeal. The appeal will be dismissed.

The applicant was deported from the United States to Mexico on August 28, 1985. The Director of the California Service Center initially denied the application on July 9, 1998, because 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 September 21, 1998, the applicant filed an appeal from the denial decision. On appeal, counsel for the applicant asserted that the applicant qualified as a class member in *Proyecto San Pablo v. Immigration and Naturalization Service* (hereinafter *INS*), 784 F. Supp. 738 (D. Ariz. 1991), a class action law suit in which the court ruled in favor of applicants.

The director of the AAO remanded the case to the Director of the Nebraska Service Center on October 15, 2001, pursuant to the judgment in *Proyecto San Pablo v. INS*. The AAO decision was mailed to the applicant and to counsel at their addresses of record, but both copies of the decision were returned to INS, now Citizenship and Immigration Services (CIS), as undeliverable mail.

On February 12, 2003, the Director of the Nebraska Service Center sent a letter to counsel regarding the *Proyecto San Pablo v. INS* lawsuit. This letter was also returned to the Service as undeliverable mail. On May 14, 2003, the director mailed another letter to the applicant at his updated address, [REDACTED] Burbank, CA 91501, informing him of the right to file a motion to reopen his case and the procedure required to file a motion to reopen pursuant to *Proyecto San Pablo v. INS*, but the applicant failed to respond to the letter.

Therefore, the Director of the Nebraska Service Center affirmed the prior denial decision, finding that the applicant cannot establish continuous residence in the United States during the requisite period because of his absence outside of the United States under an order of deportation.

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 on August 28, 1985. 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.

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.

Counsel asserted on appeal that the applicant was deprived of the opportunity to file an application for waiver of ground of inadmissibility because the denial decision dated July 9, 1998, was not mailed to her or to the applicant until eight months after the date of the denial decision. Counsel requested that the case be remanded to allow the applicant the opportunity to file a waiver application. The AAO director remanded the case on October 15, 2001. As stated previously, the AAO decision was mailed to the applicant and to counsel, but was returned to INS as undeliverable mail. The Director of the Nebraska Service Center subsequently mailed correspondence regarding the court ruling in *Proyecto San Pablo v INS* to counsel on February 12, 2003, and to the applicant on May 14, 2003, but neither counsel nor the applicant has filed an application for waiver of grounds of inadmissibility. Even if the applicant had applied for and been granted such a waiver, he would remain ineligible for temporary resident status due to his failure to reside continuously in the United States.

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 has not been granted a waiver of this ground of inadmissibility.

ORDER: The appeal is dismissed.