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[Redacted]

FILE: [Redacted]
XPO 88 119 3077

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]

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, Western Regional Processing Facility, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant departed the United States under an order of deportation in May 1984. The director denied the application 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 that date.

On appeal, the applicant claims that he departed the United States on November 28, 1982, in compliance with the grant of voluntary departure. He submits evidence in an attempt to corroborate his claim.

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).

On September 29, 1982, an Immigration Judge in Los Angeles, California, granted the applicant the privilege of voluntary departure from the United States to Peru on or before January 29, 1983, with an alternate order of deportation to become immediately effective if the applicant failed to depart the United States in compliance with the grant of voluntary departure.

The applicant indicated on his Form I-687, Application for Temporary Resident Status, that he departed the United States in May 1984 and returned to Peru to get married. He made no claim of departure outside the United States in 1982 on the Form I-687 or during his legalization interview.

The director determined that the applicant departed the United States in May 1984 under an order of deportation and denied the application because the applicant failed to maintain continuous residence in the United States during the requisite period.

On appeal, the applicant claims that he departed the United States on November 28, 1982, in compliance with the grant of voluntary departure. In support of his claim, the applicant submits a photocopy of an open Aero Peru airline ticket stub with a Lima/Mexico City/Lima itinerary and a photocopy of an Aerolineas Argentinas airline ticket with a Los Angeles/Lima/Cuzco/Lima/Trujillo itinerary and a departure scheduled for December 1. The ticket was purchased in Los Angeles, California, on August 30, 1982.

The applicant has not submitted any independent evidence to prove that he actually used these tickets to fly to Mexico City or to Lima, Peru, on November 28, 1982, as he claims.

Furthermore, as previously stated, neither ticket stub reflects a scheduled departure date of November 28, 1982. It was the responsibility of the applicant to have both complied with the grant of voluntary departure and to have demonstrated his compliance by reporting to government officials at the United States Embassy in Mexico City or in Lima, Peru.

Furthermore, as previously stated, the applicant did not list his purported departure from the United States to Mexico in November 1982 on his Form I-687, nor did he tell the officer at his legalization interview that he was outside the United States in November 1982 in compliance with the grant of voluntary departure. The applicant made no claim of an absence outside the United States in 1982 until after his application had been denied.

In view of the foregoing, we find that the applicant has not established that he timely complied with the departure order. We concur with the service center director's finding that the applicant's departure to Peru in May 1984 represents an absence outside of the United States under an order of deportation. Because of his absence outside the United States under an order of 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.

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. The applicant has not applied for a waiver of this ground of inadmissibility; however, even if he were to be granted such a waiver, he would remain ineligible for temporary resident status because of his absence outside the United States under an order of deportation during the requisite period.

Beyond the director's decision, the applicant falsely indicated on the Form I-687 that he had no prior record with the Immigration and Naturalization Service, now Citizenship and Immigration Services. As stated previously, the applicant was in removal proceedings in 1982 under record

number [REDACTED]. The applicant signed the Form I-687 on March 15, 1988, certifying under penalty of perjury that all information provided on the application was true and correct. Therefore, the applicant appears to be inadmissible to the United States under section 212(a)(6)(c)(I) of the act as an alien who used willful misrepresentation of a material fact in order to obtain an immigration benefit.

It is further noted that the applicant indicated on the Form I-687 that he was in Peru from June 5, 1987 to July 5, 1987, to visit a sick relative. Pursuant to 8 C.F.R. § 245a.2(b)(1), in order to establish eligibility for temporary resident status, an alien must establish that he or she has entered the United States prior to January 1, 1982, has resided continuously in the United States in an unlawful status from that date to the filing date of the application, and *has been continuously physically present in the United States from November 6, 1986, to the filing date of the application.* (Emphasis added.) Since the applicant was outside the United States from June to July 1987, he cannot establish continuous physical presence in the United States during the period from November 6, 1986 to March 23, 1988, the filing date of his Form I-687. Therefore, the application also must be denied for these reasons.

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).

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

The applicant is ineligible for temporary residence for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.