



U.S. Citizenship  
and Immigration  
Services

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MAR 14 2007

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

XLA 88 516 2188

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:

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 Director, California Service Center, terminated the temporary resident status of the applicant and the matter is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the case will be remanded for further consideration and action.

The director terminated the applicant's temporary resident status because he determined that the applicant was unable to establish the requisite continuous residence in the United States due to his deportation in 1990 and because the applicant failed to provide the final court disposition of his arrest in 1997.

On appeal, the applicant submits a certified court docket showing that the criminal charge against him was dismissed, but the applicant does not address the issue of continuous residence and his deportation in 1990.

In these proceedings, the AAO exercises de novo review. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The director's decision in this case must be withdrawn and the case remanded for further action pursuant to the following discussion.

*The Court Disposition of the Criminal Charge Against the Applicant*

The director terminated the applicant's temporary resident status, in part, because the record contained evidence that the applicant had been arrested and charged with a drug offense, but the applicant failed to provide the court disposition of the charge. In response to the director's Notice of Intent to Terminate, the applicant submitted a copy of the court order vacating the order detaining the applicant as a material witness against another defendant, but the applicant did not provide evidence of the final disposition of the criminal charge against himself.

On appeal, the applicant submits a certified copy of the criminal docket for case number [REDACTED] of the U.S. District Court, Western District of Washington (Seattle). The docket shows that the applicant was charged with distribution of heroin on January 22, 1997. On January 27, 1997, the court dismissed the complaint against the applicant, but ordered the applicant detained as a material witness against another defendant. On February 4, 1997, the court vacated the material witness order for the applicant.

The evidence submitted on appeal complies with the director's request and indicates that the applicant was not ineligible for temporary resident status due to a felony conviction under section 245A(a)(4)(B) of the Act. Accordingly, the applicant's criminal charge did not result in a felony conviction that would require the termination of his temporary resident status under section 245A(b)(2)(B) of the Act. The applicant has overcome this ground for denial.

*The Deportation of the Applicant Rendered him Inadmissible to the United States but did Not Provide an Independent Ground for the Termination of his Temporary Residency*

The record in this case shows that the applicant was granted temporary residence under section 245A of the Act on May 27, 1992. The effective date of the applicant's temporary resident

status was retroactive to the date his application was filed on May 4, 1988. *See* 8 C.F.R. § 245a.2(s). On June 12, 1990, an immigration judge ordered the applicant deported to Mexico. The immigration judge noted that the applicant reserved appeal, but stated that the order would be final if an appeal was not filed by June 22, 1990. The applicant abandoned his right to appeal, signed an executed warrant for his deportation to Mexico and departed the United States on June 22, 1990. Accordingly, the deportation order of the immigration judge became final on that date.

The director terminated the applicant's temporary resident status because he concluded that the applicant's deportation broke his continuous residence in the United States. The director misread the statute. The applicant's status must be terminated pursuant to section 245A(b)(2)(A) of the Act because his deportation rendered him inadmissible as an immigrant and consequently ineligible for temporary resident status under section 245A(4)(A) of the Act. The applicant's deportation did not break the continuous residence required for temporary residency and his status may not be terminated on that basis.

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). An applicant for temporary resident status must establish continuous residence in the United States since before January 1, 1982 through the date the application for temporary resident status is filed. Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A). In this case, the applicant was deported *after* his Form I-687 was filed. Accordingly, the applicant's deportation did not break the continuous residence required for temporary residency and his status cannot be terminated for that reason.

Instead, the applicant's temporary resident status must be terminated under section 245A(b)(2) of the Act because his deportation rendered him inadmissible as an immigrant and ineligible for temporary resident status pursuant to section 245A(a)(4)(A) of the Act.

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 245A(a)(4)(A) of the Act, 8 U.S.C. § 1255a(a)(4)(A). 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.

Section 245A(b)(2) of the Act mandates the termination of an alien's temporary resident status, in pertinent part:

- (A) if it appears to the [Secretary of Homeland Security] that the alien was in fact not eligible for such status;

(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant[.]

The alien was deported in 1990 and sought admission to the United States within 10 years of the date of his departure, through his application for temporary resident status that was not adjudicated until 1992. Accordingly, the applicant was inadmissible as an immigrant under section 212(a)(9)(A)(ii)(II) of the Act and ineligible for temporary resident status under section 245A(a)(4)(A) of the Act. His temporary resident status must consequently be terminated under sections 245A(b)(2)(A) and 245A(b)(2)(B)(i) of the Act.

*The Applicant Submitted Insufficient Proof of his Entry into the United States prior to January 1, 1982 and his Continuous Residence During the Requisite Period*

The record also fails to establish the applicant's entry into the United States before January 1, 1982 and the requisite continuous residence since such date, which is another ground for the termination of the applicant's temporary resident status pursuant to section 245A(b)(2)(A) of the Act. As the director did not address this issue below, the case will be remanded for issuance of a Notice of Intent to Terminate on this basis.

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 for temporary residence is filed. Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A). The applicant submitted the following, relevant documents with his Form I-687:

- pre-printed declaration with blanks filled in by [REDACTED] who states that the applicant lived with him and his wife in Los Angeles since March 1981 until the date of his declaration, October 4, 1988;
- pre-printed "Verification of Employment" with blanks filled in by [REDACTED], who states that the applicant worked for him from January 1987 to the date of his letter, October 4, 1988;
- pre-printed "Affidavit of Witness" with blanks filled in by [REDACTED] who states that the applicant has lived with him and his sister in Los Angeles since March 1981 to the date of his affidavit, October 4, 1988;
- notarized letter dated October 4, 1988 from [REDACTED] who states that he has known the applicant since 1982 and that the applicant has been living with the applicant's brother, [REDACTED] in Los Angeles.

These four brief attestations do not provide detailed, substantive testimony sufficient to establish the applicant's entry into the United States prior to January 1, 1982 and his continuous residence since his entry through the date of his application. The applicant submitted no other evidence of his allegedly continuous residence in the United States during the requisite period of the types

listed in the regulation at 8 C.F.R. § 245a.2(d)(3). Consequently, the applicant failed to establish the continuous residence required by section 245A(a)(2)(A) of the Act and his temporary resident status must also be terminated on this basis pursuant to section 245A(b)(2)(A) of the Act.

The applicant did not establish his entry into and continuous residence in the United States during the requisite period. The applicant is also inadmissible to the United States due to his deportation in 1990. Consequently, the applicant's temporary resident status must be terminated pursuant to sections 245A(b)(2)(A) and 245A(b)(2)(B)(i) of the Act.

The director erroneously concluded that the applicant's deportation broke his continuous residency and did not address the insufficiency of the evidence regarding the applicant's alleged entry into the United States prior to January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through the date the application for temporary residence was filed. Accordingly, the case will be remanded to the director for issuance of a Notice of Intent to Terminate the applicant's temporary residency: 1) pursuant to sections 245A(b)(2)(B)(i) and 245A(b)(2)(A) of the Act because the applicant's deportation rendered him inadmissible as an immigrant and ineligible for temporary resident status pursuant to section 245A(a)(4)(A) of the Act; and 2) pursuant to section 245A(b)(2)(A) of the Act because the current record does not establish the requisite entry into and continuous residence in the United States required by section 245A(a)(2)(A) of the Act.

The applicant bears the burden of proof to establish his eligibility for temporary resident status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245a.2(d)(5).

**ORDER:** The decision of the director is withdrawn. The application is remanded to the director for further consideration and action in accordance with this decision.