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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090



U.S. Citizenship
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FILE: [REDACTED]
XVN-88-519-2019

Office: LOS ANGELES

Date: SEP 08 2009

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office on your appeal. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. You are not entitled to file a motion to reopen or reconsider your case.

John Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Los Angeles. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be remanded.

On May 4, 1988, the applicant filed a Form I-687, Application for Status as a Temporary Resident. The director denied the application on August 15, 2007, stating that the record reflects that the applicant was deported from the United States on July 13, 1984, and that the applicant's departure under an order of deportation during the requisite period interrupted the applicant's continuous residence.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 a 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).

Under a class action lawsuit entitled *Proyecto San Pablo v. INS*, No. Civ 89-456-TUC-WDB (D. Ariz.), United States Citizenship and Immigration Services (USCIS) must reopen the case of an alien whose application was denied because he departed the United States after January 1, 1982 under an order of deportation. Therefore, the director's decision will be remanded to the National Benefits Center for processing under the terms of that lawsuit.

The record reflects that on January 5, 1981 the applicant was convicted in the United States District Court for the Southern District of California () of knowingly and willfully aiding and abetting aliens to enter the United States unlawfully, in violation of 8 U.S.C. § 1325 and 18 U.S.C. § 2. The applicant is thus inadmissible to the United States under section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E). The record also reflects that upon entry to the United States on January 2, 1981, the applicant made a false claim to United States citizenship, and is inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii). On remand, the director should give the applicant the opportunity to seek a waiver of the inadmissibility under section 245A(d)(2)(B), 8 U.S.C. § 1255a(d)(2)(B). The single misdemeanor conviction does not affect the applicant's eligibility for temporary residence.

The AAO notes further that the applicant filed a Form I-212 Application for Permission to Reapply for Admission into the United States after Deportation or Removal on September 24, 2002. The Form I-212 remains adjudicated at this time.

ORDER: The matter is remanded for action and consideration consistent with the above.

¹ The director indicated that the previous April 17, 1989 denial of the application for temporary residence was not documented with a written denial of record.

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