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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: SEP 11 2009

XPW 90 035 00685

IN RE: Applicant: [redacted]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

for John F. Grissom
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for adjustment from temporary to permanent resident status was denied by the Director, Los Angeles, California, and is before the Administrative Appeals Office on appeal. The appeal will be dismissed

The director denied the adjustment application because the applicant's temporary resident status had been terminated, and the applicant was therefore not eligible for adjustment to permanent resident status. The director had terminated the applicant's temporary resident status because the applicant had been deported from the United States during the requisite period.

On appeal, the applicant asserts that he had previously attempted to file a Form I-690, Application for Waiver of Grounds of Inadmissibility, but it was not accepted at the Los Angeles Legalization Office. Counsel asserts that the applicant has never hidden his deportation, and that the applicant should remain a permanent residence due to humanitarian reasons and family unity.

An alien whose temporary resident status has been terminated under 8 C.F.R. 245a.2(u) is ineligible for adjustment from temporary to permanent resident status. 8 C.F.R. 245a.3(c)(5). The record reflects that the applicant's temporary resident status was terminated on August 16, 2007.

Any alien who has been lawfully admitted for temporary resident status may apply for adjustment of status if the alien has established that he is inadmissible to the United States as an immigrant, except as other provided under subsection (d)((2). Section 245A(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1255a(b)(1)(C). 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. 1255(g)(2)(b)(i).

The record reflects that on November 18, 1982, a Form I-221S, Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien, was issued. On November 26, 1982, the applicant was deported from the United States to Mexico.

As a result of the deportation, the applicant did not reside continuously in the United States for the requisite period. He is therefore statutorily ineligible for temporary residence on that basis.

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.

The question has arisen as to why, if the above interpretation is correct, the law would allow for a waiver of inadmissibility in the case of a deported alien and yet provide no waiver for a lack of continuous residence, also based on a deportation. Clearly, not all aliens who were deported in the past fail to meet the continuous residence requirement. For example, an alien who was deported in 1978 and reentered the United States before January 1, 1982 would be inadmissible because of the deportation and yet would not be ineligible for legalization on the continuous residence issue.

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(9)(A)(ii)(II) of the Act as an alien who was deported and reentered the United States without permission. That ground of inadmissibility may be waived. The applicant indicated that he attempted to file a waiver application in an effort to overcome such inadmissibility; however, it was not accepted.

Assuming the Form I-690 had been accepted, the director would have denied the waiver application as there would be no purpose in waiving inadmissibility as the applicant was ineligible to qualify for the benefit being sought because he failed to meet the "continuous residence" provision of the legalization program.

The applicant was deported on November 26, 1982 and therefore did not maintain continuous residence as required by section 245A(a)(2) of the Act. He remains ineligible for permanent residence.

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