

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



28

FILE:



Office: Nebraska Service Center

Date: MAY 26 2005

IN RE:

Applicant:



APPLICATION:

Application for Waiver of Inadmissibility pursuant to 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 in your case. All documents have been returned to the office that originally decided your case.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility within the legalization program was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on certification. The decision is withdrawn, and the waiver application declared moot.

The director deemed the applicant inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), which relates to aliens who were deported and reentered the United States without authorization. Pursuant to section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), such inadmissibility may be waived in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

The director denied the waiver application because the applicant was seemingly otherwise ineligible for temporary residence in the legalization program, due to a failure to meet the "continuous residence" requirement. The director reasoned that there would be no purpose in granting a waiver that could not assist the applicant in gaining temporary residence.

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. § 1255(g)(2)(b)(i).

On October 9, 1985 the immigration judge at Chicago issued an order granting [REDACTED] the opportunity to voluntarily depart the United States by April 9, 1986, and stipulating that he would be deported if he did not depart by that date. The applicant departed on April 26, 1986. The center director determined that the applicant self-deported under the former 8 C.F.R. § 243.5. That regulation stated that any alien who departed the United States while an order of deportation was outstanding was considered to have been deported in pursuance of law, except that an alien who departed before the expiration of the voluntary departure time granted in connection with an alternate order of deportation was not considered to have been deported. The director concluded that, because of the deportation, the applicant is both *inadmissible* under section 212(a)(9)(ii)(II) of the Act and *ineligible* for temporary residence because he failed to reside continuously in the United States as required.

Counsel asserts that the applicant was not outside of the United States under a valid order of deportation, as the applicant's brother's name, not his, appeared on the judge's deportation order. Counsel also points out that the district director's deportation notices to the alien during this 1985-86 period contained the applicant's brother's first name. The applicant and counsel maintain that the ensuing confusion led to the applicant's failure to comply with the grant of voluntary departure.

The applicant's name is [REDACTED] His brother's name is [REDACTED] That is the name that appeared on the judge's order. Form I-166, Form I-294 and Form I-205 (Warrant Of Deportation), later issued by the District Director, Chicago on April 18, 1986, showed the

alien's name to be [REDACTED] incorporating both brothers' first names. The applicant's claim that he believed at one point that these documents applied to his brother, who resided at the same address, may well be credible.

The judges' order of deportation did not contain the applicant's name. Therefore, it cannot be concluded that the applicant departed the United States under an order of deportation. It follows that the applicant is neither ineligible for temporary residence for having failed to maintain continuous residence, nor inadmissible under section 212(a)(9)(A)(ii)(II) for having been deported.

The director's decision, which found the applicant to be inadmissible and denied the waiver application because of the continuous residence issue, is withdrawn. The waiver application is moot because the applicant is admissible, and is not in need of a waiver.

ORDER: The director's decision is withdrawn and the waiver application declared moot.