



U.S. Citizenship
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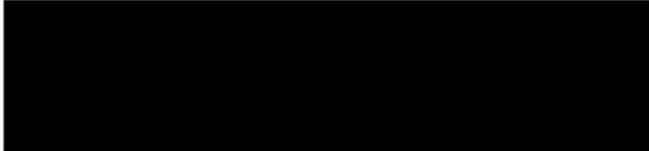
Office: Nebraska Service Center

Date: APR 17 2007

LIN-05-145-50233

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility within the legalization program was denied by the Director, Nebraska Service Center. It is now before the Administrative Appeals Office on certification. The decision will be affirmed.

The director denied the waiver application because the applicant was otherwise ineligible for temporary residence in the legalization program. The director found that it would serve no purpose to grant a waiver that could not enable the applicant to obtain temporary residence.

Neither the applicant nor counsel has responded to the certified denial. Earlier, counsel asserted the applicant should not be considered inadmissible for having been deported because of the nature of the "mass deportation hearings." Conversely, counsel requested that the applicant be granted a waiver of his alleged inadmissibility for having been deported, pursuant to the liberal and generous standards set forth in *Matter of P--*, 19 I&N Dec. 823, 828 (Comm. 1988). Counsel contended that approval of the waiver application would also remedy the lack of continuous residence stemming from the deportation.

The applicant was deported on February 9, 1982 and on August 31, 1982. While counsel maintains that the deportation hearings were conducted in an unfair manner, the contention that an order of deportation may now be reviewed or essentially appealed in this proceeding cannot be accepted. As the Director, Nebraska Service Center, explained, the deportation orders of the immigration judges were subject to appeal at the time to the Board of Immigration Appeals. The applicant did not appeal such orders. Indeed, on Form I-221S, Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien, relating to each deportation, the Special Inquiry Officer (Immigration Judge) stamped the notation "Deport to Mexico – Appeal Waived."

For having been deported, 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), 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

Although the applicant claims to have resided in the United States since 1979, the director denied the waiver application because the applicant cannot otherwise qualify for temporary residence, as he fails to meet the "continuous residence" provision of the legalization program.

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).

Relief is provided in the Act for absences based on factors other than deportation, such as absences due to emergencies and absences approved under the advance parole provisions. However, Congress provided no relief in the legalization program for failure to maintain continuous residence due to a departure under an order of deportation.

The 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. An applicant's inadmissibility under section 212(a)(9)(A)(ii)(II) for having been deported and having returned to the United States without authorization may be waived. However, an alien's inadmissibility under section 212(a) of the Act is an entirely separate issue from the continuous residence issue discussed above. Although the applicant's failure to maintain continuous residence, and his inadmissibility for having been deported and having returned without authorization, are both based on the deportation, a waiver is available only for the inadmissibility.

Counsel maintains it would make no sense for the law to 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 the same deportation. As stated above, the issues are different, and not all aliens who were deported in the past fail to meet the continuous residence requirement. As an example, an alien who was deported in 1979 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. Accordingly, an alien who has been deported may be eligible for a waiver, but must still establish that he has met the continuous residence requirement as a separate eligibility criterion.

Counsel explains that the district court in *Proyecto San Pablo v. INS*, 784 F.Supp 738, 747 (D. Ariz. 1991) concluded that a waiver would cover both the inadmissibility and the continuous residence issue. Nonetheless, in *Proyecto San Pablo v. INS*, 189 F.3d 1130 (9th Cir. 1999) the court of appeals ruled that the district court lacked jurisdiction to compel the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services, to change its interpretation of the statute.

The July 31, 2001 letter submitted by counsel from the United States Senate Committee on the Judiciary is noted. The senators urged INS to consider an approved waiver application to overcome both the ground of inadmissibility and the failure to maintain continuous residence. While it is true that the entire premise of the legalization program is ameliorative, and that the generous waiver provisions are as well, for the reasons stated above we cannot conclude that a waiver of a ground of inadmissibility impacts on the continuous residence requirement.

Concerning waivers of grounds of inadmissibility, counsel cites *Matter of P--*, *supra*, in which it was stated that, normally, denials of legalization on the basis of the waivable exclusions should only occur when the applicant is also ineligible for legalization on other grounds. The director's denial of the waiver application, because the applicant cannot otherwise qualify for legalization due to the "continuous residence" provision of the legalization program, is not inconsistent with that premise.

In support of his decision to deny the waiver application because the applicant is otherwise ineligible for legalization, the director cited *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964) and *Matter*

of J-F-D-, 10 I&N Dec. 694 (Reg. Comm. 1963). While those decisions relate to applications for permission to reapply for admission after deportation, the decisions are on point and relevant to the current proceeding. In each case the Regional Commissioner found that no purpose would be served in waiving inadmissibility because the alien was ineligible for the overall benefit of lawful residence.

It is concluded that the director's decision to deny the waiver application because no purpose would be served in granting it was proper, logical and legally sound. Therefore, it shall remain undisturbed.

ORDER: The decision is affirmed, and the application remains denied.