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U.S. Department of Homeland Security  
Citizenship and Immigration Services

Identifying data related to  
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invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street N.W.  
Washington, D.C. 20536



File # [Redacted]

Office: Nebraska Service Center

Date:

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT: Self-represented. Although counsel has recently withdrawn from this matter, his representations will be considered. This decision will be sent to the applicant only.

**PUBLIC COPY**

INSTRUCTIONS: Attached is the decision rendered on your appeal. The file has been returned to the Service Center that processed your case. If your appeal was sustained, or if your case was remanded for further action, the Service Center will contact you. 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, Director  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was initially denied by the Director, Northern Regional Processing Facility. The matter came before the Administrative Appeals Office (AAO) on appeal, and the AAO subsequently remanded the matter pursuant to court order. The application for temporary resident status was denied again by the Director, Nebraska Service Center. The most recent decision of denial has been certified for review to the AAO. The AAO will withdraw the decision and remand the matter for further consideration and action.

In the certified decision, the director noted that the applicant had been deported from the United States on September 4, 1985. The director denied the application because the applicant had not continuously resided in this country from January 1, 1982 to May 4, 1988.

Pursuant to the court order issued in *Proyecto San Pablo v. I.N.S.*, No. 89-00456-WDB (D. Ariz. filed March 27, 2001 and amended May 21, 2001), the Service (now Citizenship and Immigration Services, or CIS) issued a notice to the applicant and his attorney on March 3, 2003. The notice correctly identified the applicant as a *Proyecto* class member, and included copies of the court's order of judgement and the corresponding implementation of class action judgement as published in the Federal Register on May 3, 2002. The judgement in *Proyecto*, *id*, specifies that CIS shall not take any adverse action as to a class member until at least six months after such notice had been issued to the applicant. While it appears that counsel asked for a decision to be rendered, the director erroneously issued a certified decision denying the application for temporary residence less than four months later on June 26, 2003.

The record indicates that a copy of the Appendix providing for Freedom of Information Act requests was included with the notice issued on March 3, 2003. However, it must be noted that counsel requested a copy of the record on the applicant's behalf with the initial appeal filed on August 7, 1989. The record shows that CIS complied with the request and that counsel subsequently submitted a brief. In this brief, counsel stated that the record of proceedings as provided by CIS contained no evidence reflecting that the applicant had been deported from this country on September 4, 1985. Counsel specifically requested in the brief, as well as in numerous letters that were subsequently submitted to the CIS, that he be provided with properly certified copies of documentation that corroborated CIS's determination that the applicant had in fact been deported on this date. Therefore, counsel's request for copies of documents relating to the applicant's deportation on September 4, 1985, should have been acted upon by the director prior to the issuing of the decision dated June 26, 2003. Although counsel has since withdrawn, the copies should be forwarded to the applicant.

Additionally, the judgement in *Proyecto*, *id*, allows class members

to submit Form I-690, Application for Waiver of Grounds of Inadmissibility. The record shows that counsel later submitted the waiver application and corresponding fee. Therefore, upon receipt of the file, the director shall fee register and adjudicate the Form I-690 waiver application.

The director must adjudicate the waiver application, and then readjudicate the application for temporary residence. If the latter application is again denied, the director shall certify the decision to the AAO for review.

**ORDER:** The case is remanded for appropriate action and decision consistent with the foregoing.