



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: AUG 09 2005

IN RE:

Applicant:



APPLICATION:

Application for Status as a Temporary Resident 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, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status (legalization) was denied by the Director, Nebraska Service Center. That decision is being affirmed in a separate decision.

Counsel has submitted a motion to reopen pursuant to a class action lawsuit entitled *Proyecto San Pablo v. INS*, No. Civ 89-456-TUC-WDB (D. Ariz.). The decision in that case allows an alien whose application was denied because he had been outside of the United States after January 1, 1982 under an order of deportation to file a motion to reopen. The Director, Nebraska Service Center recently denied counsel's motion because it was not filed within the one-year period that the *Proyecto* settlement allowed for. The director certified his decision for review. The decision to deny the motion to reopen will be affirmed on the procedural ground.

On January 29, 2003, the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), published a notice in the Federal Register in order to comply with the judgement entered on March 27, 2001 in the *Proyecto* case. The Service later mailed the notice to all aliens that it was aware of who could possibly benefit from the judgement. The notice stated, "The Service will not act to reopen your case unless you notify the Service that you want the Service to do so. If you want to exercise your rights under the *Proyecto* decision, you must file with the Service a motion to reopen, without fee."

The notice also stated, "You must file your motion no later than 1 year from the date you are personally served this notice by the Service, as described below." The notice went on to explain that if the alien is known to meet the *Proyecto* class definition, the notice will be mailed by certified mail, return receipt requested, to the alien's last known address contained in his file.

In this case, the Service mailed the notice on June 30, 2003 to the last known address of the applicant. The postal receipt, signifying receipt of the notice, was signed on July 5, 2003. There is no question that the applicant received the notice, as he promptly had an individual acting on his behalf file a Freedom of Information Act (FOIA) request and an employment authorization request pursuant to the guidelines in the *Proyecto* notice.

Counsel's motion to reopen under *Proyecto*, dated October 29, 2004, was received by the Service on November 8, 2004. The director noted that the motion was not filed within the one-year period that ended on June 30, 2004, and denied the motion. The director did not consider the merits of the motion because it was late. Thus, the director's action was essentially a rejection of the motion.

The applicant states that he does not read English, was unaware that he had to file a motion to reopen, and was unaware of the one-year deadline. He indicates that he thought that his employment authorization request would "continue his case." In light of this, counsel asks that the belated motion to reopen be accepted.

As stated above, the one-year period in which to file the motion began when the applicant was "personally served" the notice. Personal service includes mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address. 8 C.F.R. § 103.5a(a)(2)(iv). Thus, the director complied with the requirement to personally serve the notice on the applicant.

As the applicant acted on the notice by promptly filing a FOIA request and an employment authorization request, which were two of the options set forth in the notice, it must be concluded that the applicant received the notice and was not impaired by a language barrier.

The notice explicitly delineated how an alien could request reopening of his legalization application, employment authorization, a waiver of inadmissibility, and information under the Freedom of Information Act. The applicant's assertion that his employment authorization request should be construed as a motion to reopen is without merit. The instructions in the notice are very clear, and state, "The Service will not make a new decision in your case unless you file a motion to reopen, which you must do within the one-year period...."

In summary, the director properly complied with the requirements set forth in the Federal Register in terms of informing the applicant of his right to file, within a year, a motion to reopen. The applicant did not file such a timely motion. The director's decision to deny the motion to reopen shall therefore be affirmed.

ORDER: The decision to deny the motion to reopen is affirmed.