



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

LI

[Redacted]

FILE: [Redacted]
LIN 04 228 52943

Office: NEBRASKA SERVICE CENTER

Date: JUN 30 2006

IN RE: Applicant: [Redacted]

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:

[Redacted]

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 temporary resident status (legalization) was denied by the Director, California Service Center. An appeal of that decision has been dismissed 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, and certified his decision for review. The decision to deny the motion to reopen will be affirmed on procedural grounds.

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 February 20, 2003 to the last known address of both the applicant and the attorney who represented him at the time. Current counsel's motion to reopen pursuant to *Proyecto*, dated July 19, 2004, was received on August 10, 2004. In the motion, counsel asserted that the director's notice was deficient because it was in the English language, which the applicant does not read. Counsel pointed out that there was no "bold notice" on the first page, drawing attention to the one-year period allowed for filing.

The director correctly pointed out in his decision that the notice informing *Proyecto* class members of their rights and responsibilities was developed and approved after extensive review and consideration by class counsel, Service counsel, and the court. The director then noted that the motion was not filed within the one-year period that ended on February 20, 2004, and denied the motion. The director properly did not consider the underlying issues of continuous residence and deportation because the motion was untimely. Therefore, the director's action was essentially a rejection of the motion.

In rebuttal to the certified denial, counsel stresses that courts have created exceptions regarding deadlines when individuals were prevented from filing motions because of deception, fraud or error. He maintains the issuance of the notice in English only constitutes an error.

Counsel cites *Matter of Tomas*, 19 I&N Dec. 464 (BIA 1987) for the proposition that there is an absolute right to a competent interpreter. However, that case relates to a deportation hearing, where the alien could not properly present evidence in the form of testimony without a qualified interpreter. Counsel has cited no statutory or regulatory requirement that Proyecto notices be issued in languages other than English.

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 could have sought assistance in complying with the notice, but did not do so until after a year had passed. The applicant did not file a timely motion, through no fault of the government.

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