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

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

[Redacted]

File [Redacted]

Office: Phoenix

Date:

OCT 10 2003

IN RE: Applicant:

[Redacted]

Application:

Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Attached is the decision rendered on your appeal. The file has been returned to the district office that processed your case. If your appeal was sustained, or if your case was remanded for further action, the district office 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.

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for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had been deported from the United States on September 26, 1986 and, therefore, had not continuously resided in this country from January 1, 1982 through May 4, 1988.

On appeal, counsel states that the applicant contests the finding that he was deported and contends that he effected a voluntary departure. She asserts he is eligible for a waiver, and should qualify for relief under *Proyecto San Pablo v. INS*, No. 89-00456-WDB (D. Ariz.). (*Proyecto*)

An applicant for permanent resident status 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 May 4, 1988. 8 C.F.R. § 245a.11(b). Such an applicant shall be regarded as having resided continuously in the United States provided the applicant did not depart the country based upon an order of deportation. 8 C.F.R. § 245a.15(c)(3).

The record contains a separate file A24 773 527, which shows that in proceedings on December 11, 1985, the immigration judge ordered that the applicant be deported from the United States should he not depart voluntarily by May 11, 1986. This file contains a validly executed warrant of deportation showing the applicant was subsequently deported from this country to Mexico on September 15, 1986, and, therefore, did not maintain continuous residence for the required period.

Approval of a waiver of inadmissibility under section 212(a)(9)(A) or section 212(a)(9)(C) of the Immigration and Nationality Act (for having reentered the United States after having been deported) does not cure a break in continuous residence resulting from a departure from the United States at any time during the period from January 1, 1982, and May 4, 1988, if the alien was subject to a final exclusion or deportation order at the time of the departure. 8 C.F.R. § 245a.18(c)(1). Relief **is** provided within the LIFE Act for absences based on factors other than deportation, namely absences due to emergencies and absences approved under the advance parole provisions. Clearly, regarding maintenance of continuous residence, it was not congressional intent to provide relief for absences under an order of deportation.

The applicant contests the categorization of his departure from the United States as a deportation. He contends he availed himself of voluntary departure. However, according to the record, on December

11, 1985, the Immigration Judge ordered that the applicant be granted voluntary departure on or before May 11, 1986. It was further ordered that if the applicant failed to depart when required, the privilege of voluntary departure would be withdrawn and the applicant would be deported. The applicant did not make a voluntary departure when required, and on September 26, 1986 the applicant was deported from the United States.

Counsel asserts that, regardless of the applicant's departure, he is eligible for a waiver under a judgement filed March 27, 2001 and amended May 21, 2001 by the U.S. District Court for the District of Arizona in *Proyecto*. Pursuant to the order of the judge in *Proyecto*, the provisions of the case apply to those individuals who filed an application for legalization under section 245A of the INA during the period of May 5, 1987 to May 4, 1988. The applicant's Form I-687 Application for Temporary Resident Status is dated December 28, 1990 by the applicant and was received by CIS on March 12, 1991. Therefore, the applicant is unable to meet this requirement.

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from January 1, 1982 to May 4, 1988, is admissible to the United States under the provisions of section 212(a) of the INA, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.