U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 25 2004

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. 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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The application for temporary resident status (legalization) was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant was outside of the United States under an order of deportation after January 1, 1982 and therefore did not reside continuously in the United States since such date. The applicant was deported on April 28, 1982 and January 6, 1984.

On appeal, the applicant asserts that, because he had applied for class membership in a class action lawsuit entitled *Proyecto San Pablo v. INS,* No. Civ 89-456-TUC-WDB (D. Ariz.), his application was improperly denied.

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. § 1255(g)(2)(b)(i).

The applicant has not contested the fact of his deportations. Because he was outside of the United States under an order of deportation subsequent to January 1, 1982, he did not maintain continuous residence. The applicant is therefore ineligible for temporary residence.

The applicant maintains that his application was improperly denied because he had, pursuant to the director's notice, requested that his legalization case be reopened under *Proyecto San Pablo v. INS, supra.* Although the director did inform the applicant of the possibility of having his case reopened under that court order, the applicant was not yet eligible for class membership in that case because his legalization application had not yet been denied. Now that the director has denied the legalization application, the applicant is an eligible *Proyecto* class member. The director shall consider the applicant's case under the guidelines set forth in *Proyecto*, and adjudicate the legalization application and waiver application.

It is noted that an Application for Permission to Reapply and an Application for Action on an Approved Application or Petition also remain pending in the applicant's other files, T92 505 243 and WAC-04-142-52910.

ORDER: The legalization appeal is dismissed. The director shall consider the applications for temporary residence and waiver of inadmissibility under *Proyecto*, and certify his decisions to this office.