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

U.S. Citizenship
and Immigration
Services

[redacted]

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FILE: [redacted] Office: CALLIFORNIA SERVICE CENTER Date: FEB 1 4 2005

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

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

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 director denied the application because the applicant purportedly had been deported on December 22, 1983, and therefore did not continuously reside in the United States from January 1, 1982 until he applied for legalization on May 2, 1988. However, as counsel points out, the executed warrant of deportation that the director referred to in her decision is not in the record. It may exist in another file that relates to the applicant. There is no evidence in this record that the applicant was deported, and the record is therefore deficient.

More importantly, under a class action lawsuit entitled *Proyecto San Pablo v. INS,* No. Civ 89-456-TUC-WDB Citizenship and Immigration Services is to reopen the case of an alien whose application was denied because he had been outside of the United States after January 1, 1982 under an order of deportation. Therefore, this case is to be referred to the Nebraska Service Center for processing under that lawsuit. Furthermore, the applicant's arrest record should be addressed as well.

ORDER: The matter is remanded for action and consideration consistent with the above.