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

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[REDACTED]

FILE:

XAH-87-013-7035

Office: NEBRASKA SERVICE CENTER

Date: FEB 24 2009

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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 on your appeal. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. You are not entitled to file a motion to reopen or reconsider your case.

  
John Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was denied by the Director, Western Regional Processing Facility. An appeal of that decision was dismissed by the Legalization Appeals Unit. The decision then came before the Administrative Appeals Office (AAO) on a motion to reopen. The AAO rejected the motion to reopen. The AAO will now *sua sponte* reconsider its adverse decision, and the motion to reopen will be deemed properly filed and approved.

On August 13, 1987, the applicant filed a Form I-687, Application for Status as a Temporary Resident. The application was denied by the director, Western Regional Processing Facility, on July 29, 1988. An appeal of that decision was dismissed by the Legalization Appeals Unit on July 7, 1989. On March 3, 2004, the applicant filed a motion to reopen his application pursuant to the terms of *Proyecto San Pablo v. INS*, No. Civ 89-456-TUC-WDB (D. Ariz.). On May 8, 2006, the director, Nebraska Service Center, approved the applicant's motion to reopen. The director reviewed the application and determined that the applicant failed to overcome the grounds for the initial denial. The director denied the application and certified his decision to the AAO. On October 23, 2006, the AAO issued a decision to affirm the director's denial.

On March 25, 2008, the applicant filed a notice to appeal the AAO's denial of his application for temporary resident status. The AAO treated the applicant's appeal as a motion to reopen, and on November 17, 2008 rejected the motion as without any merit. The AAO has now *sua sponte* reconsidered its decision to reject the motion. The district court's amended order in *Proyecto San Pablo v. Department of Homeland Security*, No. Civ 89-456-TUC-RCC (D. Ariz.) June 4, 2007, provides that the Department of Homeland Security shall, upon the request of the applicant, reopen the applicant's legalization application and treat such application as pending. Therefore, the AAO's decision to reject the motion was in error, and shall be withdrawn from the record. The applicant's motion to reopen will be deemed properly filed and approved.

The AAO notes that USCIS will withhold the re-adjudication of the legalization applications of class members who properly submit motions to reopen pursuant to the district court's June 4, 2007 amended order and who either submit or have submitted accompanying waiver applications that are the subject of *Proyecto San Pablo v. Department of Homeland Security* until the resolution of the appeal pending before the Ninth Circuit Court of Appeals.

Based upon the foregoing, the applicant's motion to reopen will be deemed properly filed and approved. His legalization application will be reopened pursuant to this motion. The re-adjudication of the application will be withheld until resolution of the appeal pending before the Ninth Circuit Court of Appeals.

**ORDER:** The applicant's motion will be deemed properly filed and approved.