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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529 - 2090



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]  
XWI-88-148-00034

Office: NEBRASKA SERVICE CENTER

Date:

**OCT 14 2009**

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was denied by the director of the Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The director denied the application because he found that the evidence submitted with the application was insufficient to establish eligibility for temporary resident status because the applicant was outside of the United States under an order of deportation after January 1, 1982, and thus was unable to establish continuous residence in the United States since such date.

On appeal, the applicant does not address the basis for her denial. The applicant did not submit any additional evidence on appeal.

The record reveals that the applicant's application for temporary residence was denied on August 10, 1988, because the applicant was deported from the United States on November 27, 1984.<sup>1</sup>

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. § 1255a(g)(2)(B)(i). A challenge to the Service's implementing regulations was dismissed in *Proyecto San Pablo v. INS*, No. Civ 89-456-TUC-WDB (D. Ariz.). There is no waiver of this statutory prohibition.

On January 29, 2003, the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), published a notice in the Federal Register to comply with the judgment 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 judgment. 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 further explained that if an alien is known to meet the *Proyecto* class definition, the notice will be mailed by certified mail, return receipt

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<sup>1</sup> On or about June 12, 1984 the immigration judge ordered the applicant to be deported should she not voluntarily depart by October 12, 1984. The applicant did not voluntarily depart the United States. On October 26, 1984, a warrant of deportation was issued, pursuant to which on November 20, 1984 the applicant was taken into custody. On November 27, 1984 the applicant was deported from the United States.

requested, to the alien's last known address contained in his or her file.<sup>2</sup>

In this case, there is no evidence in the record that the Service mailed the notice to the applicant as required in the case of a Proyecto class member.

Accordingly, the case will be remanded for the Nebraska Service Center to determine whether the applicant meets the *Proyecto* class definition and, if so, to mail the notice to the applicant.

**ORDER:** The case will be remanded for further consideration and action.

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The relevant court order and Federal Register Notice are guideposts and may be found at [uscis.gov](http://uscis.gov) under "Legal Settlements." Aliens are timely IRCA filers who had been ordered deported and were either removed by the INS or self-deported. During the period the aliens were to show continuous residence for IRCA filing the alien was out of the country under such an order (in violation of 245A(g)(2)(B)(i)). The court ordered that CIS allow class members to file a motion to reopen and supplement record, if so desired, and enter a new decision. All denials are then certified to the AAO. Pursuant to the Federal Register Notice, the NSC mails, by certified mail, a copy of the notice to any alien it appears is a class member. The alien then has one year from such notice (or personal service) to file an motion to re-open. In processing Proyecto cases, the NSC has discovered various unadjudicated petitions and applications at various stages and has forwarded those to the appropriate office for adjudication. In June 2007 the court ordered that aliens who filed a first motion to re-open be allowed to file a second motion to re-open. CIS seeks appeal to circuit court.