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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

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U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 11 2009
XSD-87-051-00007

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. 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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the director of the California Service Center is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration and action.

The director terminated the temporary resident status of the applicant 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. Therefore, the director determined that the applicant was ineligible for temporary resident status at the time her application was granted.

On appeal, counsel for the applicant asserts that the applicant was not under an order of deportation when she departed, but that the applicant departed voluntarily from the United States some time in 1985.

The record reveals that the applicant's temporary resident status was terminated on March 11, 1999 because the applicant was deported from the United States on May 6, 1986.¹

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). A challenge to the Service's implementing regulations was dismissed in *Proyecto San Pablo v. INS*, No. Civ 89-456-TUC-WDB (D. Ariz.)

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 requested, to the alien's last known address contained in his or her file.

¹ On October 23, 1985 the immigration judge ordered the applicant to be deported should she not voluntarily depart by November 23, 1985. The applicant did not voluntarily depart the United States. On January 23, 1986 a warrant of deportation was issued and on May 6, 1986 the applicant was deported from the United States.

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

Accordingly, the case will be remanded for the San Diego office 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.