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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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SEP 15 2009

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:
XSD-88-517-04025

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, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. Following the court order in *Proyecto San Pablo v. INS*, No. Civ 89-456-TUC-WDB (D. Ariz.) (*Proyecto*), the director approved the applicant's motion to reopen the case, again denied the application, and certified the denial to the AAO. The director's decision will be remanded.

On May 4, 1988, the applicant filed a Form I-687, Application for Status as a Temporary Resident. The director denied the application on June 22, 1990, stating that the record reflects that the applicant was deported from the United States on March 31, 1987, and that the applicant's departure under an order of deportation during the requisite period interrupted the applicant's continuous residence. The AAO dismissed the appeal, finding that the applicant's departure under an order of deportation during the requisite period interrupted the applicant's continuous residence.

An applicant for temporary residence must establish entry into the United States before January 1, 1982, and continuous residence in the United States in a 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).

Under the *Proyecto* class action lawsuit, the court ordered United States Citizenship and Immigration Services (USCIS) to reopen the case of a class member whose application was denied because he departed the United States after January 1, 1982 under an order of deportation. The director reopened the case pursuant to the terms of *Proyecto*, denied the application, and certified the denial to the AAO on December 15, 2004.

In 2007 the court in *Proyecto* ordered USCIS to again reopen the denied applications of class members, and to readjudicate them in accordance with procedures outlined by the court. Therefore, the director's decision will be remanded to the Nebraska Benefits Center for processing under the terms of the 2007 *Proyecto* court order.

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