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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]
XPW 90 166 00608

Office: LOS ANGELES

Date: **SEP 28 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status 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 application for adjustment from temporary to permanent resident status in the legalization program was denied by the Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded.

The director denied the adjustment application because the applicant's temporary resident status was terminated on August 24, 2007, and the applicant was therefore not eligible for adjustment to permanent resident status. The director terminated the applicant's temporary resident status because the applicant had not established that he had continually resided in the United States in an unlawful status since January 1, 1982.

The record establishes that the applicant was deported from the United States on April 6, 1983. Section 245A(g)(2)(B)(i) of the Act provides that "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 the United States as a result of a departure under an order of deportation ...". The director denied the application to adjust to permanent resident status, and terminated the applicant's temporary residence, as he had been deported during the requisite period. The AAO agrees that the applicant's continuous residence was interrupted when he left the United States under an order of deportation during the requisite period.

On appeal, counsel submits a brief admitting that the applicant was deported from the United States on April 6, 1983. Counsel states that the applicant's departure from the United States under an order of deportation during the requisite period should not disqualify him from adjustment to permanent resident status. Counsel further states that while the applicant is not a class member under *Proyecto San Pablo v. INS*, No. Civ 89-456-TUC-WDB (D. Ariz) (hereinafter *Proyecto*), he should be permitted to adjust his status to that of a permanent resident because his temporary resident status was not terminated until April 24, 2007, and that had his status been terminated in a timely manner he would have been eligible for adjustment under *Proyecto*.

The record reflects that on February 21, 2003, United States Citizenship and Immigration Services (USCIS) notified the applicant that he may be a *Proyecto* class member, and provided him with notice of his rights and responsibilities under the court order. The AAO notes that the applicant was not a class member at the time he received the notice as his temporary resident status had not been denied or terminated because of the deportation until August 24, 2007. The applicant is now a *Proyecto* class member in that: he filed a Form I-687 during the initial filing period; he was deported during the requisite period; and his temporary residence status was terminated because of such deportation on August 24, 2007. As the applicant is a *Proyecto* class member, the case will be remanded to the director to process in accordance with the terms of that lawsuit.

ORDER: The director's decision director's decision is remanded for further processing consistent with the above.