

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

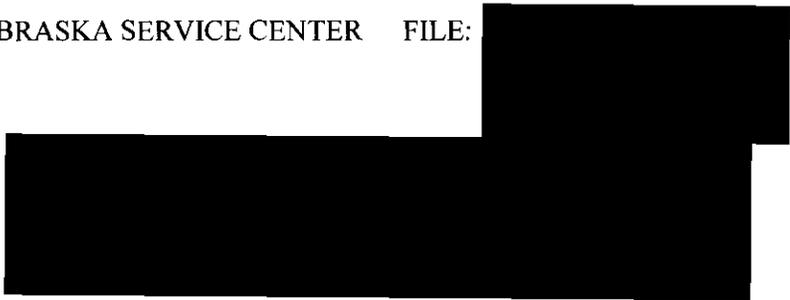
**PUBLIC COPY**



L1

DATE: OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: **MAR 22 2012** Applicant:



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:



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, Northern Regional Processing Facility. An appeal of that decision was dismissed. The Director, Nebraska Service Center granted a motion to reopen that was filed by the applicant pursuant to a class action lawsuit entitled *Proyecto San Pablo v. INS*, No. Civ 89-456-TUC-WDB (D. Ariz.). The application was denied by the Director and the denial affirmed by the Administrative Appeals Office (AAO) on certification. Pursuant to Notice to Class Members in *Proyecto San Pablo v. INS*, dated August 2, 2007, the applicant filed a subsequent motion to reopen. The application was denied by the Director, Nebraska Service Center, and certified to the AAO. This matter will be remanded for further action and consideration.

On May 4, 1988, the applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). On January 25, 2012, the director denied the application based on the applicant's failure to establish continuous unlawful residence during the requisite period, finding that the applicant's 1986 deportation terminated his continuous residence. The director also stated that the applicant failed to respond to the Notice of Intent to Deny (NOID).

Counsel asserts that the applicant responded to the director's NOID in a timely manner. Counsel submits photocopies of the submitted documentation and evidence of the timely submission. The record contains a photocopy of a registered certified mail receipt delivered to the director at the Nebraska Service Center on December 8, 2011.

The regulations at 8 C.F.R. § 245a.20(a)(2) state, in pertinent part:

*Denials.* The alien shall be notified in writing of the decision of denial and of the reason(s) therefore. When an adverse decision is proposed, CIS shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted a period of 30 days from the date of the notice in which to respond to the notice of intent to deny. All relevant material will be considered in making a final decision.

In light of the evidence indicating that the applicant did, in fact, respond to the director's request for additional evidence, the director's decision is withdrawn. Accordingly, the case will be remanded for consideration of the applicant's rebuttal to the NOID and a new final decision to the applicant. The new decision, if adverse to the applicant, shall be certified to this office for review.

**ORDER:** The director's decision is withdrawn. This matter is remanded for further action and consideration pursuant to the above.