

**Summary Immigration History of Rosa Aurora Sabido-Valdivia
with reference to punitive implications of the
Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRAIRA)**

To the greatest extent possible, the information specified in this summary has been verified with documentation that can be available upon a request to jennifer@KainRiosImmigration.com

Rosa was born in Jalapa, Veracruz, Mexico April 3, 1964. Rosa's mother and her biological father Manuel married in 1965 and divorced in 1974.

Rosa's mother Blanca married Rosa's stepfather Roberto Obispo on April 3, 1982, on Rosa's 18th birthday. For US immigration law to recognize the relationship of stepchild between Rosa and Roberto, the marriage needed to take place before she turned 18.

After doing agricultural work in the US for several years, Roberto established a home in Cortez, Colorado in about 1984. Roberto was able to apply to become a lawful permanent resident based on the Legalization program for "special agricultural workers" passed in the mid-1980's, but this legalization program did not allow family members of agricultural workers to become lawful permanent residents. These new lawful permanent residents could file petitions for spouses and minor children, but because of visa limits set by Congress the family based 2nd category, especially for Mexican nationals were backlogged for many years, separating families, whether by the physical border or by leaving some family members with and some without lawful immigration status.

Rosa first entered the US with a visitor visa in 1987 at the age of 23. Rosa and Blanca made trips together to spend time with Roberto in Colorado between 1987 and 1993. After 1993, Blanca retired from her job in Mexico and stayed in Cortez. Rosa continued to travel between Mexico and the US with her visitor visa between 1993 and 1998, but was spending more time in the US than in Mexico. She was unaware that this would become a problem.

Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 [IIRAIRA] was passed by Congress in September 1996, and its many punitive provisions, policies and enforcement provisions, including the accrual of unlawful presence, went into effect on April 1, 1997. Rosa traveled to Mexico on December 17, 1997, she tried to re-enter the US at the airport in Phoenix AZ with her visitor visa on April 7, 1998. She was questioned about the time she had spent in the US and if she was working in the US. Rosa explained that she only worked as a babysitter and lived with her mother and stepfather when she was in the US. She was sent back to Mexico after being permitted to withdraw her application for admission.

Rosa decided that she could not be separated from her family in Colorado and entered the US without inspection on or about May 31, 1998. Rosa wanted to obtain legal status. Someone told her that she could apply for a work permit. She did not consult an attorney to understand her situation. A *notario* (a notary public, not an attorney) in Los Angeles filed an asylum application for Rosa. The asylum application was referred to US Immigration Court in Los Angeles. Without consulting or hiring an attorney, Rosa represented herself *pro se* in Immigration Court and withdrew the asylum application in immigration court on April 16, 2001.

Roberto, who had become a Lawful Permanent Resident in the late 1980's, became a US citizen on October 21, 1999. Roberto could petition for Blanca as his spouse, but not for Rosa as his stepdaughter because Rosa was 18 when Blanca and Roberto married. Blanca was able to become a lawful permanent resident in 2001, because Roberto filed a petition for her and because she entered the US lawfully. Although immigration laws generally requires a perfect immigration history to be able to apply to adjust status to permanent residence while remaining in the US, there is a limited exception for immediate relatives (including the spouse) of a US citizen, whose only violations are an overstay of a lawful admission or unauthorized employment.

Blanca became a lawful permanent resident in 2001. She was able to file an I-130 petition for Rosa in July 2001. This was too late to preserve the opportunity for another limited exception to the requirement of having a perfect immigration history to adjust status: INA §245(i) protection. Rosa's was initially classified in the F2B visa preference category, as an adult daughter of a lawful permanent resident. Because of the limited number of visas set by Congress, Rosa would have to wait for decades for her priority date to become current to have the opportunity to apply for permanent residence status. This remains true now, even though Blanca has since become a US citizen. The law does not provide status or protection to allow a person with an approved petition but without a current priority date to remain in the US.

Rosa agreed to Change of Venue to US Immigration Court in Denver, March 22, 2002. Rosa filed for Cancellation of Removal before the Immigration Judge in Los Angeles and completed the submission of documents with the US Immigration Court in Denver. Rosa continued to represent herself in immigration court *pro se*. She did not understand that she was not eligible for Cancellation or Removal because even though she had lived with her mother and stepfather in Colorado since the late 1980's and early 1990's, she did not have the required uninterrupted 10 years in the US, immediately preceding her case being sent to the immigration court in early 2001.

The Immigration Judge denied Rosa's Cancellation of Removal on August 19, 2002, specifically because she was absent from the US for more than 90 days, between December 1997 and May 1998 and because she was "Voluntarily Returned" to Mexico in April 1998. and granted a 60 day voluntary departure period to October 18, 2002.

Rosa appealed to Board of Immigration Appeals *pro se* on September 18, 2002. The Board of Immigration Appeals denied Rosa's Appeal on February 20, 2004. Rosa appeared for an interview appointment scheduled on March 17, 2004 with US ICE to demonstrate her means to depart the US. She returned to her family home in Cortez, Colorado. Rosa filed a Petition for Review *pro se* before the 10th Circuit Court of Appeals on March 18, 2004. 10th Circuit denied Rosa's Petition for Review on September 13, 2005.

There is no available evidence of correspondence from ICE to Rosa after the March 2004 ICE interview, which she attended. ICE arrested Rosa at her family home on September 12, 2008, having classified her as a fugitive. Rosa was detained for several hours at the US ICE office in Durango, Colorado. Rosa was released from detention under an Order of Supervision, primarily because of a serious medical condition. Rosa's nephew and cousin, who were also arrested at the family home that day, were later deported to Mexico. Rosa returned to her family home in Cortez;

she underwent major abdominal surgery to remove massive uterine myomas on March 26, 2009. She was in the hospital for more than a week following surgery.

Rosa worked with Attorney Kelly Ryan to get help with understanding her legal situation and communicating with USICE about her medical condition and continuing the Order of Supervision in 2009. This was the first time that Rosa had legal counsel. Attorney Jennifer Kain-Rios first contacted US ICE in July 2010 on Rosa's behalf and again in December 2010 and worked with Rosa to review available legal records and request additional information through the Freedom of Information Act. US ICE informed Attorney Kain-Rios that Rosa's order of supervision would terminate on March 15, 2011.

Attorney Kain-Rios filed an application for a Stay of Removal on March 3, 2011. It was granted on March 11, 2011, valid with an Order of Supervision through March 2, 2012. A Stay of Removal is an application available only to people with a final removal/deportation order, which is submitted to the local office of USICE. The decision to grant a Stay of Removal is discretionary, based on consideration of evidence that shows the reasons why a person should be allowed to remain in the United States for the time being requested. Stays of Removal can be granted for a maximum of one year at a time. In Rosa's case when a Stay was approved her Order of Supervision was continued, which is the basis for eligibility for Rosa's employment authorization between 2011 and 2017.

Attorney Kain-Rios filed a seventh Application for Stay of Removal on behalf of Rosa on April 26, 2017. Another ICE officer signed the denial for Acting Field Officer Director Jeffrey Lynch on May 11, 2017; the denial was not postmarked until May 16 and was received by Attorney KainRios on Friday May 19, 2017. Rosa has been previously scheduled to attend a check-in appointment with USICE on Monday, June 5, 2017 as part of her Order of Supervision. Rosa was aware that despite her long history of cooperation with USICE, that the agency was behaving differently since earlier in spring of 2017. Several people, who had Stays of Removal in place for several years, had their stays denied, and were arrested and detained at what had previously been routine ICE check in appointments and then were subsequently removed from the United States.

Rosa asked for sanctuary at the Mancos United Methodist Church. The Congregation had agreed to become a sanctuary earlier that spring and accepted Rosa into sanctuary on Friday, June 2, 2017. She has remained in sanctuary there since.

Sanctuary does not offer any legal solution for an individual, but calls for justice. The protection of sanctuary for any individual is not guaranteed by law, but there are laws and precedent that uphold Sanctuary. Sanctuary is outside of a legal framework, but it is buttressed by Constitutional protections from unlawful search and seizure. Sanctuary has the practical effect of protecting an individual from being removed from the United States, but at great personal cost.

A person in sanctuary is not free to live their lives outside of Sanctuary, but that limitation is self-imposed. That private personal choice to be in sanctuary includes an agreement with those that provide sanctuary that they will work together to promote the public voice of sanctuary. A person in sanctuary provides a living example of injustice and a call for change. In Rosa's case, her example speaks of a legal immigration system that for decades has separated families and

penalized good people with deep ties to their communities in the United States for trying to keep their family together. The public voice of Sanctuary calls continued Congressional inaction in the face of these injustices unconscionable!

On Monday morning, June 5, 2017, while Rosa was in sanctuary at the Mancos United Methodist Church, a group of those who support her in sanctuary went to the ICE office in Durango Colorado to meet with ICE on her behalf. Pastor Craig Paschal, members of his Mancos United Methodist Church congregation, members of the Montelores Catholic Communities and community members from the towns near Mancos and Cortez, Colorado, attended the check in appointment with USICE and informed them that Rosa was in sanctuary.

Rosa is not hiding. USICE enforcement actions are limited by law, including the US Constitution. The Fourth Amendment of the US Constitution limits government searches and seizures on private property. ICE is required to respect the 4th Amendment and should not enter the Mancos United Methodist Church Fellowship Hall without a judicial warrant.

Rosa is still waiting for the opportunity to become a Lawful Permanent Resident, based on the approved I-130 Petition filed by her mother Blanca in July 2001. Rosa is now classified in the Family Based Preference Category 1, as the adult unmarried daughter of a US citizen, because her mother is now a US citizen. The US Department of State Visa Bulletin for January 2018, shows that those in FB1 category from Mexico, who filed on or before November 1, 1996, now finally as of January 1, 2018 can apply to become lawful permanent residents because their priority date is finally current, 21 years after the petition was filed. Based on the limited number of visas set by Congress for each immigrant category and the number of petitions ahead of her, it will still be many years before Rosa will be able to apply for lawful permanent residence based on her mother's petition for her.

Even when that time comes, under current law, Rosa is not eligible to ask for and receive permanent residence inside the United States. Generally, a person must have a perfect immigration history to ask for and received an immigration benefit while remaining in the United States, with few exceptions. Rosa does not qualify for any of those exceptions under current law. She will have to face the uncertainty of the consular process, including a ten year bar for having accrued more than one year of unlawful presence, which is triggered when she departs the US necessarily to attend a visa interview at the US consulate in Ciudad Juarez. She would need to be granted a waiver of the ten year bar for unlawful presence. She will also need to request and receive advance permission to apply for admission after removal/deportation, because, when she failed to depart under the order of Voluntary Departure following the completion of all of her appeals in 2004, that order was automatically converted to an Order of Removal.

Rosa may file for a new Stay of Removal, but under the current circumstances and the current administration, she is extremely unlikely to receive a new Stay. Even if a new Stay of Removal were granted, it is a short term and impermanent solution.

Rosa will work with community members and Congressional offices to request support for a Private Bill, which if passed, may result in lawful permanent residence. The likelihood of passage of Private Bill is always low and under the current composition of Congress and its subcommittees,

it is even less likely. In the past, having a Private Bill pending in Congress, could result in the grant of Stays of Removal. Even if a Private Bill for Immigration Relief, could not get passed during a particular session, it could be introduced and re-introduced in subsequent Congressional sessions and Stays of Removal would be granted out of respect for the legislative process.

In May 2017, USICE informed Congressional leadership that they were ending the practice granting Stays of Removal for individuals with Private Bills pending. The new policy states that USICE would grant a single Stay of Removal limited to six months when a Private Bill is introduced and pending before Congress. To date, we have not seen this policy in practice. Several of the individuals who had been in sanctuary were able to leave sanctuary in 2017 because USICE agreed to apply the prior policy of granting Stays of Removal for individuals with pending Private Bills in their cases, because Private Bills for them had been introduced and were pending prior to May 2017.

While in Sanctuary, Rosa has been working to support other immigrants, those in Sanctuary around the State of Colorado and around the United States, those Dreamers who are anxious about their futures in the United States, and those immigrant families, who are afraid they might be separated by unprincipled enforcement operations.

Rosa has been working with community members to change the hearts and minds of those who might not be informed about the true plight of immigrants in the United States: to recognize the current positive contributions of immigrants to their communities, as well as the need to reform the broken legal system, which makes it impossible for anyone without a perfect immigration history to legalize their status.

Rosa and her supporters coordinate efforts with the United Methodist Church and the Denver Metro Sanctuary Coalition to promote the public voice of Sanctuary: US Immigration Laws and Enforcement Practices are Unjust, and Congress' Continued Failure to Pass Comprehensive Immigration Reform is Unconscionable.

Rosa is working with supporters and her attorney to obtain the support of members of Congress for a Private Bill to legalize her own status. Rosa shares her considerable cooking skills with her community with delicious catered meals and her famous tamales, with all proceeds going to cover part of the costs related to her stay in Sanctuary.

Now Rosa better understands how the law works and the mistakes she made in her case. Now Rosa is seeking justice, and not just for herself. Rosa's continuing to remain in sanctuary is a demonstration of her commitment to changing the current law and agency enforcement behavior because they are unjust. She understands that she may not obtain an individual benefit or legal solution from her efforts in the short term. She tells her story from sanctuary to inform others about the injustices of living with the immigration system we have. Her story provides insight into the situation of so many others, who are at risk of deportation unless the law is changed. She speaks in solidarity with others, who fear that their families will be separated even though they have a long history of contributing to their communities. She endures the confinement of sanctuary

in the hope that US citizens will start to understand that continued Congressional inaction on immigration is unconscionable.

Rosa will work with her attorney to pursue any other opportunities that the law or agency discretion may offer, which would allow her to remain with her family and her community in Colorado.