

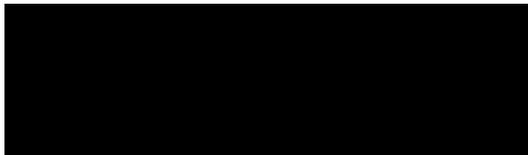
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Services

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FILE: MSC-04-328-10196

Office: NEW YORK

Date: JUL 23 2008

IN RE: 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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for Temporary Resident Status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director stated in her Notice of Intent to Deny (NOID) that the applicant did not submit sufficient evidence to meet his burden of proving that he resided continuously in the United States for the duration of the requisite period. Specifically, she noted that the applicant submitted and signed a Form G-325A Biographic Information sheet with his Form I-485 Application to Register Permanent Resident or Adjust Status. On this Form G-325A, the applicant indicated that he resided in Gorakhpur, India from December 1959 until July 1987. The director granted the applicant 30 days within which to submit additional evidence in support of his application. Though the director noted that her office received additional evidence from the applicant in response to her NOID, she found it was insufficient to overcome her reasons for denial as stated in her NOID. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant, through counsel asserts that the director erred when she considered the Form G-325A in the file because a previous attorney erred when he completed that form. He submits additional evidence in support of his application.

An applicant for Temporary Resident Status 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). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on August 23, 2004. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his address in the United States during the requisite period to be [REDACTED] in North Babylon, New York from December 1981 until December 1989. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he was absent once during the requisite period when he traveled to India to visit a sick relative from June to July in 1987. At part #33, where the applicant was asked to

list all of his employment in the United States since he first entered, he showed that he was self-employed doing odd jobs in an unspecified location from December 1981 to December 1988.

Also in the record is a Form I-687 that is signed but not dated. It appears that this Form I-687 was submitted to establish class membership. At part # 33 of this application where the applicant was asked to list all of his residences since he first entered, he indicated that he resided at [REDACTED] in Jersey City, New Jersey. It is noted that the applicant did not indicate that he had resided elsewhere in the United States. It is also noted that the applicant failed to indicate when he resided at this address. At part #35 where the applicant was asked to indicate all of his absences from the United States since he first entered, he indicated that he was absent from the United States from June to July 1987 to visit his brother who was seriously ill.

Further in the record is a G-325A Biographic Information Form that was signed by the applicant on September 27, 1996 and was submitted with his Form I-485 Application to Register Permanent Residence or Adjust Status. On this Form G-325A the applicant indicated that he resided in Gorakpur, India from December 1959 until July 1987. This statement casts doubt on the applicant's assertion that he resided continuously in the United States for the duration of the requisite period.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken

from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

Evidence in the record that is relevant to the applicant's claim of having maintained continuous residence in the United States for the duration of the requisite period is the following:

1. An affidavit from [REDACTED] that was notarized on May 24, 2002. The affiant states that the applicant lived in and occupied a room from December 1981 to May 1989. However, the affiant failed to indicate the address of the room that she knows the applicant resided in at that time or indicate whether it was in the United States. She did not state the frequency with which she saw the applicant in the United States during the requisite period or indicate whether there were periods of time when she did not see him. Because this affidavit is significantly lacking in detail, it carries minimal weight as evidence that the applicant resided in the United States during the requisite period.
2. A declaration from the applicant that is signed but not dated. The applicant states that he entered the United States unlawfully on July 28, 1981 and that he has resided in the United States since that time except for one absence when he left to see his brother who was ill in India from June 10, 1987 until July 2, 1987.
3. A receipt for registered mail that is dated June 3, 1982 and bears a stamp that shows it was postmarked in Portsmouth, New Hampshire. This receipt shows that the applicant's address is "[REDACTED]" based in "Pireus," Greece. Though this receipt is from a post office in the United States, the applicant indicated he was residing on a ship that was based in Greece at the time he sent the package. It is noted that the applicant has also submitted a Crewman's Landing Permit from July 28, 1981 that shows he was working on the MV-Euco Ferry as a crewman on that date.
4. A purchaser's receipt showing that 3,500.00 was sent from the First National Bank of Portsmouth to the Bangkok Bank and was issued to the account of [REDACTED]. This receipt bears a note that states, "[REDACTED]" and is dated June 3, 1982.
5. A photocopy of a Form I-95A Crewman's Landing Permit that was issued to the applicant on July 28, 1981. This permit shows that the applicant was a crew member on the vessel MV-Eurco Ferry at the time this Form I-95A was issued.

6. A declaration from [REDACTED] signed by [REDACTED] who does not indicate his title. This declaration is dated December 1, 1990. The declarant states that the applicant was employed at his restaurant in Smithtown as a cook from August 1981 until October 1984. However, the declarant does not indicate whether the information regarding the applicant's dates of employment was taken from official company records or how he was able to determine the applicant's dates of employment with this restaurant. This letter does not indicate whether there were periods of layoff during the applicant's employment. As was previously noted, the applicant indicated that he was employed doing various odd jobs from December 1981 until the end of the requisite period on his Form I-687. He did not indicate that he had ever worked for this restaurant on his Form I-687. Because this letter is not consistent with what the applicant showed as his employment during the requisite period on his Form I-687 and because this declaration is significantly lacking with regards to the criteria that the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that declarations from employers must adhere to, it carries only very minimal weight as evidence that the applicant resided in the United States during the requisite period.
7. A Judgment of Divorce that is dated August 2, 1996 that states that the applicant's wife, [REDACTED], was granted a divorce from the applicant on that date. This judgment states that the applicant began residing in the United States in 1986.

It is noted that the applicant also submitted evidence as proof of his residence subsequent to the requisite period. The issue in this proceeding is whether the applicant has submitted sufficient evidence that he resided in the United States for the duration of the requisite period to meet his burden of proof. As these documents pertain to the applicant's residence in the United States subsequent to the requisite period, they are not relevant to this proceeding and therefore they will not be considered.

The director issued a Notice of Intent to Deny (NOID) to the applicant on February 2, 2006. In this NOID, the director stated that though the applicant stated that he entered the United States on July 28, 1981, and began residing in the United States since that time, he did not submit evidence that allowed him to meet his burden of proving that he did so. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to the director's NOID, the applicant submitted the following in support of his application:

An affidavit from the applicant that was notarized February 21, 2006. The applicant states that he has enclosed affidavits as proof of his residence in the United States during the requisite period. He goes on to state that his previously submitted Form G-325A that shows that he resided in India from December 1959 until July 1987 was completed in error. He asserts that his prior attorney misunderstood his dates of residence in the United States when he completed this Form G-325A.

- Affidavits from [REDACTED] and [REDACTED] that were both notarized on February 20, 2006. The affiants state that they know the applicant resided in the United States from 1981 until the date they submitted their affidavits. They state that the applicant has been their employee for a long time. However, they do not indicate when this employment began or what type of employment they hired this applicant to perform. They state that the longest period of time that they have not seen the applicant for is six months. However, they do not indicate when these six months occurred or whether this period occurred during the requisite period. They fail to state when and where they first met the applicant or whether they met in the United States. They do not state the frequency with which they saw the applicant during the requisite period. Because these affidavits are significantly lacking in detail, they can be accorded minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] that was notarized on February 20, 2006. The affiant states that he knows the applicant resided in the United States from 1981 until 1990. He states that the applicant is his best friend. He states that sometimes he goes with the applicant to movies and parties. He states that the longest period of time that he has not seen the applicant for is six months. However, he does not indicate when these six months occurred or whether they occurred during the requisite period. He fails to state when and where he first met the applicant or whether they met in the United States. He does not state the frequency with which he saw the applicant during the requisite period. Because this affidavit is significantly lacking in detail, it can be accorded very minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] that was notarized on February 21, 2006. The affiant states that he knows the applicant resided in the United States from 1981 until the date he submitted his affidavit. He states that the longest period of time that he has not seen the applicant for is six months. However, he does not indicate when these six months occurred or whether they occurred during the requisite period. He fails to state when and where he first met the applicant or whether they met in the United States. He does not state the frequency with which he saw the applicant during the requisite period. Because this affidavit is significantly lacking in detail, it can be accorded very minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] that was notarized on February 20, 2006. The affiant states that he knows the applicant resided in the United States from 1981 until the date he submitted his affidavit. He states that he has been friends with the applicant for a long time. He states that the longest period of time that he has not seen the applicant for is six months. However, he does not indicate when these six months occurred or whether they occurred during the requisite period. He fails to state when and where he first met the

applicant or whether they met in the United States. He does not state the frequency with which he saw the applicant during the requisite period. Because this affidavit is significantly lacking in detail, it can be accorded very minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.

- An affidavit from [REDACTED] that was signed by [REDACTED], who indicates he is the owner of that company. This affidavit was dated on June 23, 2004. The affiant states that the applicant worked performing odd jobs for their company from December 1981 to December 1988 on a part time basis. The affiant fails to indicate how he was able to determine the applicant's start date as his employee. He did not state whether official company records were consulted to establish these dates. He further fails to indicate the number of hours the applicant worked, or whether there were periods of unemployment during the requisite period. He did not indicate that he knew that the applicant was residing continuously in the United States at the time he was employed by Mr. [REDACTED]. Because this affidavit is significantly lacking with regards to the criteria that the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that affidavits from employers must adhere to, it carries very minimal weight as evidence that the applicant resided in the United States during the requisite period. It is noted that the applicant indicated that he was self-employed for the duration of the requisite period. It is also noted that the applicant has submitted a declaration that states that he was employed by Jhoola Restaurant for part of this same period, from 1981 to 1984.

The director denied the application for temporary residence on March 14, 2006. In denying the application, the director noted that her office received the additional evidence from the applicant as noted above. The director stated that for her office to consider affidavits to be credible, they must be submitted with: identification documents from affiants; proof that affiants were in the United States during the requisite period; evidence that there was a relationship between the applicant and the affiants and a current phone number at which affiants can be reached to verify information in their affidavits. The director stated that the affidavits this applicant submitted did not meet these criteria and therefore, her office did not find them to be credible. Because of this, the director stated that the applicant failed to meet his burden of proof and denied his application.

On appeal, the applicant submits a brief through counsel. In this brief, counsel asserts that the director failed to accord due weight to the evidence submitted by the applicant in support of his application. Counsel asserts that the applicant has been in the United States since 1980. It is noted that the applicant has indicated that he entered the United States in 1981. Counsel also states that the applicant is submitting evidence of his residence in the United States from 1981 until 1988.

The applicant submits the following additional evidence in support of his application:

- An affidavit from [REDACTED], who indicates he is the president and owner of [REDACTED]. This letter is dated April 3, 2006. In this letter, Mr. [REDACTED] states that the applicant worked for his company on a part time, as needed basis from 1981 until 1988 and that he paid the applicant in cash at that time. However, he does not state how he was able to confirm the applicant's start date as his employee. He fails to state whether official records were consulted to determine the applicant's dates of employment. He further fails to indicate the number of hours the applicant worked, or whether there were periods of unemployment during the requisite period. He did not indicate that he knew that the applicant was residing continuously in the United States at the time he was employed by Mr. [REDACTED]. Because this affidavit is significantly lacking with regards to the criteria that the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that affidavits from employers must adhere to, it carries very minimal weight as evidence that the applicant resided in the United States during the requisite period. It is noted that the applicant indicated that he was self-employed for the duration of the requisite period. It is also noted that the applicant has submitted a declaration that states that he was employed by Jhoola Restaurant for part of this same period, from 1981 to 1984.
  - Mr. [REDACTED] submits receipts that show that he was working in the United States in 1975. Though these receipts are proof that this affiant was in the United States and owned a company prior to the requisite period, they do not offer proof that the affiant employed the applicant during the requisite period.
- An affidavit from [REDACTED] that was notarized on March 27, 2006. The affiant submits a photocopy of his New York State Driver License issued to him in 2002 with his affidavit. The affiant states that he personally knows that the applicant resided in North Babylon, New York from December 1981. He states that the applicant is his friend and employee. He does not indicate what capacity he employed the applicant in or whether he employed the applicant during the requisite period. The affiant states that the longest period of time that he has not seen the applicant for is six months. However, he does not indicate when these six months were or whether they occurred during the requisite period. He further fails to indicate the frequency with which he saw the applicant during the requisite period.
- An affidavit from [REDACTED] that was notarized on March 20, 2006. The affiant submits a photocopy of his driver's license that was issued to him in 2004 with his affidavit. The affiant states that he personally knows that the applicant resided in North Babylon, New York at [REDACTED] from December 1981. He states that he first met the applicant at a gas station in 1981 and that the applicant is his best friend. However, he does not indicate where this gas station was or whether it was in the United States. He does not indicate the frequency with which he saw the applicant during the requisite period or whether there were periods of time when he did not see the applicant during that time. Because this affidavit is significantly lacking in detail, it can only be accorded

minimal weight as evidence that the applicant resided in the United States for the duration of the requisite period.

- An affidavit from [REDACTED] that was notarized on March 23, 2006. The affiant submits a photocopy of a veteran's identification card with his affidavit. The affiant states that he personally knows that the applicant resided at [REDACTED] in North Babylon, New York from 1981 until 1988. He states that the applicant is like his son. However, the affiant failed to state where he first met the applicant or whether he first met him in the United States. He did not state the frequency with which he saw the applicant during the requisite period. He further failed to indicate whether there were periods of time during that period when he did not see the applicant. Because this affidavit is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] that was notarized on March 22, 2006. The affiant submits a telephone bill from 2005 and a utility bill from 2006 with his affidavit. The affiant states that he knows the applicant resided in the United States at [REDACTED] from 1981 until the present time. It is noted that the applicant indicated that he only resided at this address from 1981 until 1989 on his Form I-687. Though he states that he sees the applicant all of the time and that the applicant is a good friend, he does not indicate the frequency with which he saw the applicant during the requisite period. He fails to state whether there were periods of time during the requisite period when he did not see the applicant. Because this affidavit is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] that was notarized on March 29, 2006. The affiant submits a photocopy of his New York State Driver License issued to him in 2002 with his affidavit. The affiant states that he knows that the applicant resided at [REDACTED] in North Babylon, New York from December 1981 until 1988. He states that he has known the applicant since 1981 and that the applicant is his best friend. He does not state the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time during that time when he did not see the applicant. Because this affidavit is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided in the United States for the duration of the requisite period.
- A declaration from [REDACTED] that is dated April 11, 2006. This declaration indicates that [REDACTED]'s position is that of the controller of Straight Path Service Station. The declarant states that the applicant has been employed by him on a part-time basis from 1981 to 1988. It is noted that though the applicant indicated he worked for Straight Path Service Station on his Form I-687, he indicated that he did so beginning in

2002. The declarant does not state how he was able to confirm the applicant's start date as his employee. He fails to state whether official records were consulted to determine the applicant's dates of employment. He further fails to indicate the number of hours the applicant worked, or whether there were periods of unemployment during the requisite period. It is noted that the applicant indicated that he was self-employed for the duration of the requisite period. It is also noted that the applicant has submitted declarations that state that he was employed by [REDACTED] and by [REDACTED]s during this same period. Because this affidavit is significantly lacking with regards to the criteria that the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that affidavits from employers must adhere to, and because it shows employment that is not consistent with what the applicant has stated his employment was during the requisite period, it carries very minimal weight as evidence that the applicant resided in the United States during the requisite period.

The AAO has reviewed the documents in the record that are relevant to the applicant's claim of having maintained continuous residence in the United States for the duration of the requisite period. He has stated on his Form I-687 that he was self-employed doing odd jobs during the requisite period, yet he has submitted letters from a restaurant and a gas station that assert that he was employed by those establishments during the relevant period. He has submitted a receipt dated June 3, 1982 that shows his address of residence to be on the same boat that he submitted a Crewman's Landing Permit dated June 28, 1982 from. The existence of this receipt showing that the applicant resided on this boat casts doubt on the applicant's claim that he was residing in the United States continuously from December 1981. Further, the record contains a divorce decree that states that the applicant began residing in the United States in approximately 1986 and a Form G-325A that was signed by the applicant that states that he resided in India from his date of birth until July 1987. These documents further cast doubt on the applicant's assertion that he resided continuously in the United States for the duration of the requisite period.

Counsel for the applicant has argued that a previous attorney for the applicant erred when he completed the Form G-325A in the record. However, the AAO notes that any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

Though the applicant has also submitted the aforementioned affidavits in support of his claim of having maintained continuous residence in the United States, these affidavits do not carry sufficient weight to allow him to meet his burden of proof for the reasons noted above.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for Temporary Resident Status under section 245A of the Act on this basis.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.