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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]  
MSC-05-019-18476

Office: NEW YORK

Date:

JUN 26 2008

IN RE:

Applicant:

[REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

*for* *Michael T. Kelly*  
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 District. 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, on October 19, 2004 (together, the I-687 Application). 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, specifically noting that “the information and documentation [that the applicant] submitted are insufficient to overcome the grounds for denial.” In addition, the director noted that she was unable to contact three of the applicant’s affiants. The director denied the application as the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and waived the right to submit a written brief or statement. Counsel did not submit any additional evidence on appeal. On the Form I-694, counsel states that “it is very difficult to find evidence after twenty-five year. Most of [the applicant’s] friends and people that could provide better evidence of his residency are no longer living in the United States.” Counsel explains that the director called two of the affiants, [REDACTED] and [REDACTED], while they were at work. Counsel adds that [REDACTED]’s affidavit incorrectly stated his area code. As of this date, the AAO has not received any additional evidence from counsel or the applicant. Therefore, the record is complete.

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.

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), “until the date of filing” shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 periods, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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.* 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered before 1982 and resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 19, 2004. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed his first address in the United States as [REDACTED], Jackson Heights, New York, from November 1981 to January 1990. At part #33, he listed his first employment in the United States as a delivery boy for Ralph's Italian Restaurant in New York, New York, from 1981 to November 1986. At part #32, the applicant listed two absences from the United States since entry. The applicant visited family in Ecuador from September 1986 to October 1986 and again from July 1987 to August 1987. At part #31, the applicant did not list any affiliations or associations in the Form I-687 dated October 19, 2004, but included the Blessed Sacrament Church on the Form I-687 dated August 5, 1991.

The applicant has provided numerous affidavits, notarized statements, letters from individuals claiming to be former employers, a copy of the applicant's passport issued in New York on March 1, 1992, a copy of the applicant's passport issued on October 17, 2004, a copy of the applicant's New York driver's license issued on June 3, 2005, a copy of the applicant's pay stubs, a copy of postmarked envelopes addressed to the applicant, a receipt without a date, a telephone bill dated April 22, 1992, a bank statement for September 25 to October 26, 1992, the applicant's employment authorization card issued on November 18, 1992, a copy of his marriage certificate showing that he was married in New York on June 12, 1991, and a copy of his son's birth certificate listing his son's date of birth as August 14, 1992. The record includes the pending I-687 Application as well as a prior Form I-687, dated August 5, 1991, which was submitted in support of the applicant's class member application in a legalization class-action lawsuit. The applicant's passport and New York driver's license are evidence of the applicant's identity, but do not demonstrate that he entered before 1982 and resided in the United States for the requisite period. Some of the evidence submitted is either undated or indicates that the applicant resided in the United States after the requisite period and is not probative of residence before that date. The following evidence relates to the requisite period:

- An affidavit from [REDACTED] dated April 5, 2006. The declarant lives in New York, New York and states that he has lived in the United States since 1982. The declarant states that he has known the applicant "for more than twenty-five years" and that he met the applicant when the applicant's brother brought him to the declarant's place of employment, Ralph's Restaurant. According to this statement, the declarant met the applicant prior to April 5, 1981. The declarant adds that "we shared good moments in the restaurant, and [the applicant] told me that he likes the life in the United States." Although the declarant states that he has known the applicant "for more than twenty-five years," he also states that he has only been in the United States since 1982. Furthermore, the applicant claims to have first entered the United States on November 17, 1981 and could not have met the declarant prior to April 5, 1981. In addition, although the declarant states that he has known the applicant for more than 25 years, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. The declarant does not indicate how he dates his initial acquaintance with the

applicant or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- An affidavit from [REDACTED] dated April 18, 2006. The declarant states that she lives in Flushing, New York and has lived in the United States since 1977. She also states that she has known the applicant since December 1982. Although the declarant states that she has known the applicant since 1982, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. The declarant does not indicate under what circumstances she met the applicant in 1982, how she dates her initial acquaintance with the applicant, or how frequently she had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- An affidavit from [REDACTED] dated April 5, 2006. The declarant states that he lives in Jackson Heights, New York and has lived in the United States since 1983. He states that he has known the applicant since 1983 and that he met the applicant through his father. The declarant also states that he and the applicant “have some common friends, [they] play soccer together, and [they] celebrate some birthdays.” Although the declarant states that he has known the applicant since 1983, the statement does not supply enough details to lend credibility to a 23-year relationship with the applicant. The declarant does not indicate under what circumstances she met the applicant in 1983, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A form-letter “Affidavit of Witness” from [REDACTED] dated May 12, 2005. The declarant states that he lives in Chicago, Illinois and has lived in the United States since 1984. He states that he has known the applicant since 1986 and that he met the applicant in New York. Although the declarant states that he has known the applicant since 1986, the statement does not supply any details to lend credibility to a 19-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1986, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Furthermore, the statement does not include the declarant’s address or telephone number, and thus cannot be verified. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A form-letter “Affidavit of Witness” from [REDACTED] dated May 12, 2005. The declarant states that he lives in New York and has lived in the United States since 1981. He states that he has known the applicant since 1982 and that he met the applicant in New York. Although the declarant states that he has known the applicant since 1982, the statement does not supply any details to lend credibility to a 23-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1982, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Furthermore, the statement does not include the declarant’s address or telephone number, and thus cannot be verified. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A form-letter “Affidavit of Witness” from [REDACTED] dated May 12, 2005. The declarant states that he lives in New York and has lived in the United States since 1979. He states that he has known the applicant since 1982 and that he met the applicant in New York. Although the declarant states that he has known the applicant since 1982, the statement does not supply any details to lend credibility to a 23-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1982, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Furthermore, the statement does not include the declarant’s address or telephone number, and thus cannot be verified. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A form-letter “Affidavit of Witness” from [REDACTED] dated May 12, 2005. The declarant states that he lives at “[REDACTED]” and has lived in the United States since 1980. He states that he has known the applicant since 1983 and that he met the applicant in New York. Although the declarant states that he has known the applicant since 1983, the statement does not supply any details to lend credibility to a 22-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1983, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A form-letter “Affidavit of Witness” from [REDACTED] dated May 12, 2005. The declarant states that he lives in New York and has lived in the United States since 1986. He states that he has known the applicant since 1986 and that he met the applicant in New York. Although the declarant states that he has known the applicant since 1986, the statement does not supply any details to lend credibility to a 19-year relationship with the

applicant. The declarant does not indicate under what circumstances he met the applicant in 1986, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Furthermore, the statement does not include the declarant's address or telephone number, and thus cannot be verified. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- An undated form-letter "Affidavit of Witness" from [REDACTED]. The declarant states that she lives in New York, New York and has known the applicant since 1981. The declarant states that she met the applicant at Blessed Sacrament Church in Corona-Queens. The declarant also lists four addresses for the applicant in New York from 1981 to 1991. She includes an address for the applicant at [REDACTED], Jackson Heights, New York from November 1987 to January 1989, an address not listed on the Form I-687. None of the dates for the other three addresses match the dates on the applicant's Form I-687. Although the declarant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to at least a 10-year relationship with the applicant. The affiant does not state the frequency of her contact with the applicant, and her statement lacks significant details about the affiant's contact with the applicant that would indicate extensive contacts with him during the requisite period. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- An undated form-letter "Affidavit of Witness" from [REDACTED]. The declarant states that she lives in New York, New York and has known the applicant since 1981. The declarant states that she met the applicant at a Christmas party in 1981. She adds that "since that time, we maintain a good friendship." The declarant also lists four addresses for the applicant in New York from 1981 to 1991. She includes an address for the applicant at [REDACTED], Jackson Heights, New York from November 1987 to January 1989, an address not listed on the Form I-687. None of the dates for the other three addresses match the dates on the applicant's Form I-687. Although the declarant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to at least a 10-year relationship with the applicant. The declarant does not indicate under what circumstances she met the applicant in 1981, how she dates her initial acquaintance with the applicant, or how frequently she had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- An undated form-letter "Affidavit of Witness" from [REDACTED]. The declarant states that she lives in Jackson Heights, New York and did not state how long she has known the applicant. The declarant states that she met the applicant through his brother

[REDACTED]. She adds that she and [REDACTED] “are good friends” and long-time coworkers. The declarant also lists four addresses for the applicant in New York from 1981 to 1991. She includes an address for the applicant at [REDACTED], Jackson Heights, New York from November 1987 to January 1989, an address not listed on the Form I-687. None of the dates for the other three addresses match the dates on the applicant’s Form I-687. Although the declarant states that she has “personally known and been acquainted” with the applicant and provides addresses for the applicant from 1981 through 1991, the statement provided does not supply enough details to lend credibility to at least a 10-year relationship with the applicant. The declarant does not indicate under what circumstances she met the applicant, the date of her initial acquaintance with the applicant, or how frequently she had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant’s claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

A form-letter “Affidavit of Witness” from [REDACTED] dated September 11, 1991. The declarant states that she lives in South Ozone Park, New York and has known the applicant since a time when they both lived in Ecuador. The declarant states that she is a friend of the applicant’s family. The declarant also lists four addresses for the applicant in New York from 1981 to 1991. She includes an address for the applicant at [REDACTED], Jackson Heights, New York from November 1987 to January 1989, an address not listed on the Form I-687. None of the dates for the other three addresses match the dates on the applicant’s Form I-687. Although the declarant states that she has “personally known and been acquainted” with the applicant and provides addresses for the applicant from 1981 through 1991, the statement provided does not supply enough details to lend credibility to at least a 10-year relationship with the applicant. The declarant does not indicate under what circumstances she met the applicant in the United States, the date of her initial re-acquaintance with the applicant in the United States, or how frequently she had contact with the applicant in the United States. Given these deficiencies, this statement has minimal probative value in supporting the applicant’s claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A form-letter “Affidavit of Witness” from [REDACTED] dated January 3, 1992. The declarant states that he lives in Woodside, New York and has known the applicant since 1981. The declarant states that he met the applicant at a birthday party in 1981 in Queens. He adds that “since that time, we keep [sic] a good relationship.” The declarant also lists four addresses for the applicant in New York from 1981 to 1991. He includes an address for the applicant at [REDACTED], Jackson Heights, New York from November 1987 to January 1989, an address not listed on the Form I-687. None of the dates for the other three addresses match the dates on the applicant’s Form I-687. Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to at least an 11-year relationship with

the applicant. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized employer letter from Broadway Bakery signed by a manager who did not include a name and whose signature is not legible. The letter is dated November 10, 1992 and states that the applicant has been employed by Broadway Bakery since February 1992 as a “salescounter.” The letter also states that the applicant is paid in \$320.00 per week in cash and is responsible for paying taxes. By regulation, letters from employers should be on employer letterhead stationery if available and must include the applicant’s address at the time of employment, exact period of employment and layoffs, duties with the company; whether the information was taken from official company records; and where records are located and whether U.S. Citizenship and Immigration Services (CIS) may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer’s willingness to come forward and give testimony if requested. 8 C.F.R. § 245a.2(d)(3)(i). This letter does not meet these regulatory standards. It is not on letterhead and does not provide the applicant’s address; the declarant does not offer to either produce official company records or to testify regarding unavailable records. Furthermore, this letter is for employment after the requisite period and is not probative of residence before that date.<sup>1</sup>
- An employer letter from Villagari Inc., Ralph’s Italian Restaurant signed by [REDACTED], president. The letter is dated August 18, 2004 and states that the applicant has been employed since 1996 as a waiter. The letter also states that the applicant is paid in \$300.00 per week plus tips. By regulation, letters from employers should be on employer letterhead stationery if available and must include the applicant’s address at the time of employment, exact period of employment and layoffs, duties with the company; whether the information was taken from official company records; and where records are located and whether U.S. Citizenship and Immigration Services (CIS) may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer’s willingness to come forward and give testimony if requested. 8 C.F.R. § 245a.2(d)(3)(i). This letter does not meet these regulatory standards. The declarant does not offer to either produce official company records or to testify regarding unavailable records. Furthermore, this letter is for employment after the requisite period and is not probative of residence before that date.
- A notarized letter from [REDACTED], M.D. dated January 7, 1992. The declarant states that he attended to the applicant’s acute illness on August 8, 1987 in Cuenca,

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<sup>1</sup> The applicant identified this employer on the Form I-687 dated August 5, 1991, but did not identify this employer on the Form I-687 dated October 19, 2004.

Ecuador. The declarant recommended “total rest for three days and the corresponding medical treatment.” This statement has no probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized letter from § [REDACTED] dated January 4, 1991. The declarant states that the applicant “purchased an airline ticket via Quito-Mexico-Quito, on the 28<sup>th</sup> day of August, 1987.” This statement has no probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized letter on letterhead of the Blessed Sacrament Church in Jackson Heights, New York, dated September 11, 1991 and signed by [REDACTED], Parochial Vicar. The applicant’s name and current address are included, and the letter states that “according to [the applicant’s] testimony and my best personal knowledge, [the applicant] is a member of this parish.” The declarant includes three prior addresses for the applicant. One of the addresses is not included in the Form I-687 dated October 19, 2004.<sup>2</sup> The AAO notes that the dates for the addresses also do not coincide with the dates provided at part #30 of the Form I-687 dated October 19, 2004. While consistent with the applicant’s description of his affiliations or associations on the Form I-687 dated August 5, 1991, the applicant failed to list any such association on the Form I-687 October 19, 2004. Moreover the letter fails to conform to regulatory guidelines in that it does not establish how the author knows the applicant, other than that author is using his “best personal knowledge;” or state the origin of the information provided, other than that it was provided by the applicant himself. *See* 8 C.F.R. § 245a.2(d)((3)(v). The letter has no probative value for these reasons.
- A notarized employer letter from Joe’s Seafood Restaurant on company letterhead signed by a [REDACTED], the owner. The letter is dated December 30, 1991 and states that the applicant has been employed by as a busboy since April 1988. The letter also states that the applicant is paid in \$300.00 per week in cash and is responsible for paying taxes. By regulation, letters from employers should be on employer letterhead stationery if available and must include the applicant’s address at the time of employment, exact period of employment and layoffs, duties with the company; whether the information was taken from official company records; and where records are located and whether U.S. Citizenship and Immigration Services (CIS) may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer’s willingness to come forward and give testimony if requested. 8 C.F.R. § 245a.2(d)(3)(i). This letter does not meet these regulatory standards. It does not provide the applicant’s address; the declarant does not offer to either produce official company records or to testify regarding

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<sup>2</sup> The address is [REDACTED], Jackson Heights, New York. This address was also listed in five of the “Affidavit of Witness” form letters listed above.

unavailable records. This letter can be accorded only minimal weight as evidence of residence during the requisite period.<sup>3</sup>

- An employer letter from Villagari Inc., Ralph's Italian Restaurant signed by [REDACTED], president. The letter is dated August 18, 2004 and states that the applicant was employed from "1981 to the end of 1986" as a delivery boy. The letter also states that the applicant was paid in \$100.00 per week plus tips. By regulation, letters from employers should be on employer letterhead stationery if available and must include the applicant's address at the time of employment, exact period of employment and layoffs, duties with the company; whether the information was taken from official company records; and where records are located and whether U.S. Citizenship and Immigration Services (CIS) may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer's willingness to come forward and give testimony if requested. 8 C.F.R. § 245a.2(d)(3)(i). This letter does not meet these regulatory standards. The letter does not provide the applicant's address at the time of employment and declarant does not offer to either produce official company records or to testify regarding unavailable records. This letter can be accorded only minimal weight as evidence of residence during the requisite period.

A notarized sworn letter from [REDACTED] dated September 11, 1991. The affiant states that he lives in Woodside, New York and is the applicant's brother. The affiant also states that he was the legal guardian for the applicant from November 1981 to 1987, and responsible for the support of the applicant while the applicant was a minor. The AAO notes that applicant's date of birth as provided in the Form I-687 is October 17, 1968. In 1981 the applicant was 14 years old and minor. Although the affiant states that he was responsible for the support of the applicant, the affiant does not provide an explanation as to why the applicant did not attend school or receive medical care while the affiant was responsible for the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A copy of four paystubs for the pay periods ending on December 27, 1986; December 26, 1987; March 21, 1987; and April 2, 1988 listing the applicant's name. The paystubs show that the applicant was paid \$145.50 for 40 hours of work. The paystubs also show that federal and state income taxes were withheld. The AAO notes that the applicant stated that he was employed by Brades Restaurant as a dishwasher and in the Form I-687 dated August 5, 1991, the applicant stated his pay as \$145.50. The record of proceeding does not contain copies of the applicant's Internal Revenue Service (IRS) Form W-2 or Form 1040 for the years 1986, 1987, or 1988. The paystubs are evidence of the applicant's residence beginning on December 1986. However, in light of the short

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<sup>3</sup> The applicant identified this employer on the Form I-687 dated August 5, 1991, but did not identify this employer on the Form I-687 dated October 19, 2004.

periods covered by them, these paystubs do not strongly support the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A copy of four postmarked envelopes addressed to the applicant at an address included in the Form I-687 dated October 19, 2004. The envelopes are dated 1981, 1982, 1983, and 1984. Although the applicant's name is written on these envelopes, they have minimal weight as evidence of residence.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although the applicant has submitted numerous letters and form affidavits, they all lack sufficient detail to be found credible or probative. Employer letters and the one letter from a church fail to meet regulatory standards. The duplicative language, use of forms and the failure to meet statutory standards also detract from the probative value of the affidavits.

The remaining evidence in the record is comprised of the applicant's statements, in which he claims to have entered the United States without inspection on November 17, 1981 through the Mexican border and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. Even when fully considered in combination with each other, the documents submitted in support of the application are insufficient to establish that the applicant's assertion of eligibility is probably true.

Finally, in a Federal Bureau of Investigation (FBI) report dated November 26, 2004, the applicant was arrested by the New York Police Department on September 19, 2006. The applicant was charged with possession of a forged instrument, operating a motor vehicle without insurance, equipment violation – stop lights, and motor vehicle license violation – no license. According to the interview notes for the applicant's March 23, 2006 interview, in response to the question "Have you ever been arrested?" the officer only wrote the word "traffic." Pursuant to 8 C.F.R. § 245a.18(a)(1), three misdemeanor convictions would render the applicant ineligible for adjustment to permanent resident status. However, there are no dispositions in the record of proceeding and the record contains no evidence that the applicant has been convicted for these offenses.

The director issued a notice of intent to deny (NOID) on November 17, 2005 and on March 24, 2006. The director denied the application for temporary residence on July 5, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, counsel did not submit any additional evidence in support of the applicant's claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981. On the Form I-694, counsel states that "it is very difficult to find evidence after twenty-five year. Most of [the applicant's] friends and people that could provide better evidence of his residency are no longer living in the United States." Counsel explains that the director called two of the affiants, [REDACTED] and [REDACTED] while they were at work. Counsel adds that [REDACTED]'s affidavit incorrectly stated his area code. Finally, counsel argues that "the documents that the applicant submitted are credible" and that "he has been living in the United States for the statutory period. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts 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 limited probative value of the supporting documentation, it is concluded that the applicant 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.