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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

[Redacted]

Office: CHICAGO

Date:

**SEP 15 2008**

MSC-06-098-21303

IN RE:

Applicant:

[Redacted]

APPLICATION:

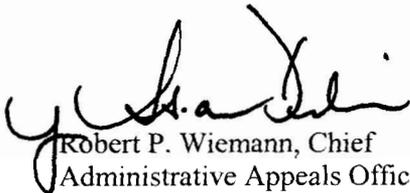
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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, Chicago. 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. Specifically, the director noted that though the applicant asserted that he worked for Lake Breeze Restaurant beginning in 1982, when the owner of that restaurant was contacted, she stated that the restaurant did not open until 1986. The director stated that this cast doubt on whether the applicant had accurately represented his employment in the United States during the requisite period. The director denied the application, finding that 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.

The director did not raise the issue of class membership in the current decision that is on appeal before the AAO. Since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership.

On appeal, the applicant asserts he has lived in the United States since prior to January 1, 1982. He attempts to account for the contradictions in his previously furnished evidence and 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.

The statutory language at section 245A(b)(1)(C) of the Immigration and Nationality Act (Act) provides that applicants for adjustment to temporary resident status “*must establish* that he or she is (i) is admissible...and (2) *has not been convicted* of any felony or 3 or more misdemeanors.”

“Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

“Misdemeanor” means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if

any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The record reflects that the applicant was arrested on August 17, 1999 in Chicago, Illinois for *Reckless Discharge of a Firearm*. An arrest summary page from the Chicago Police Department shows that on August 24, 1999 this charge against the applicant was stricken from the docket with leave to reinstate. The Chicago Police Department Arrest Page Summary also shows that the applicant was arrested on January 1, 1993 and charged with *Possession of a Firearm* a violation of the Illinois Criminal Code § 24. This report shows that on March 15, 1993, the applicant forfeited his bail bond and a warrant was issued. This report also shows that there was no sentence issued at that time. The court disposition in the record clarifies that the applicant was arrested for two counts of *Discharging a Toy Firearm*. A second Certified Court Disposition in the record shows that the applicant was charged on three counts, "UUV" or *Unlawful Use of a Weapon*, under Illinois Criminal Code 24 § 1(a)(2), *Carrying or possessing a weapon with an intent to use it against another; No Registration*, and *Discharging of Firearm* also violations of the Illinois Criminal Code § 24. This court disposition, dated November 30, 1999 states that all charges were stricken from the record with leave to reinstate on August 24, 1999. Because the record does not show the applicant has been convicted as a result of any of the above noted arrests, he does not appear to be ineligible to adjust to temporary resident status pursuant to the Act § 245A(b)(1)(C).

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 pursuant to the CSS/Newman Settlement Agreements and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on January 6, 2006. 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 indicated his address in the United States during the requisite period to be [REDACTED] in Chicago, Illinois from November 1981 until August 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 in May of 1988. The record reflects that at the time of his interview with a Citizenship and Immigration Services (CIS) officer, he indicated that this absence was actually in April 1988 and lasted for two weeks. 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 employed by Lake Breeze Restaurant in Chicago as a dishwasher from March 1982 until September 1989.

The record shows a Form I-687 was submitted by the applicant in 1990 to establish CSS/Newman Class membership. Here, the applicant stated his address during the requisite period and his place of employment consistently with what he indicated on his previously and subsequently filed Forms I-687. He indicated that his employment with Lake Breeze Restaurant

began in March 1982. He also indicated that he was absent from the United States from March 15 to April 10, 1988.

The record also shows that the applicant successfully submitted his first Form I-687 to the Service on May 1, 1988. This Form I-687, submitted during the original legalization filing period, shows that the applicant indicated that he first entered the United States on November 20, 1982. At part # 16 of this application, the applicant indicated that he also last entered the United States on November 20, 1982. At part #33 where the applicant was asked to list all of his residences in the United States since he first entered, he indicated that his first and only address in the United States was [REDACTED] in Chicago, Illinois where he resided from November 20, 1982 until he signed this Form I-687. At part #35 where the applicant was asked to list all of his absences from the United States since he first entered, he indicated that he had never been absent from the United States. At part #36 where the applicant was asked to list all of his employment in the United States since he first entered, he indicated that he had been continuously employed as a dishwasher at an establishment at [REDACTED]. Here he showed his first employer at that restaurant to be, "Gas," from November 1982 until October 1983; his second employer at this restaurant to be, [REDACTED] from January 1984 until November 1986; and his third employer to be, [REDACTED] from December 1986 until he submitted this Form I-687 in 1988. It is noted that on his subsequently filed Forms I-687 the applicant showed that his employment with this restaurant began in March 1982 rather than in November of that year. It is noted that the applicant did not indicate his date of first entry into the United States, absences from the United States, the date he began his residence in the United States or the date that he began his employment in the United States consistently on his subsequently filed Forms I-687.

The record shows that the applicant was interviewed pursuant to this previously Form I-687 filed on May 1, 1988 and that the Service denied the application after the applicant testified that he did not enter the United States until November 20, 1982 during an interview with an immigration officer. The director issued the decision regarding this previously filed Form I-687 on September 14, 1988. The applicant appealed the director's decision at that time by submitting a Form I-694 Notice of Appeal of Decision to the Administrative Appeals Unit on September 23, 1988. On January 31, 1991, the Service dismissed the applicant's appeal, finding that he had not met his burden of establishing that he first entered the United States before January 1, 1982.

Also in the record is a Record of Sworn Statement taken from the applicant at the Chicago International Airport on December 28, 1993. The applicant indicated that he had first entered the United States on November 20, 1981 in this statement.

The applicant has been inconsistent when testifying before immigration officers regarding his first date of entry into the United States. He has testified both that he did and that he did not enter the United States until after January 1, 1982. This inconsistency casts doubt on his current claim that he entered before that date.

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).

As was previously noted, the director did not deny the applicant's claim of class membership. Rather, she denied his case on the merits of his current claim of having resided continuously in the United States for the duration of the requisite period. Therefore, the AAO's review in this matter only pertains to the applicant's claim of continuous residency in the United States during the requisite period.

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 documents in the record that are relevant to establishing whether the applicant resided continuously in the United States for the duration of the requisite period include the following:

1. An affidavit from [REDACTED] that was notarized on May 3, 2006. The affiant submits a photocopy of her Illinois Identification Card and a copy of her Resident Alien Card with her affidavit. In her affidavit, she states that she arrived in the United States in 1973 and became a legal permanent resident on July 29, 1985. She states that she is the applicant's mother. She states that she remembers that the applicant arrived in the United States in March 1981 and began residing with her at that time.
2. An affidavit from [REDACTED] that was notarized on April 27, 2006. The affiant submits a photocopy of his Illinois Identification Card and a photocopy of what appears to be the affiant as a young child and the applicant as a younger man. The affiant states that the applicant is his oldest brother. He states that he was born in 1977 and that his brother began residing with his family when he was around three to four years old. He states that he knows the applicant began residing with him when he, the affiant started pre-kindergarten. The affiant states that because he was a minor, he does not have proof

of his own employment or residence from 1982 to 1989. He states that he has photographs of himself with the applicant that were taken during the requisite period.

3. An affidavit from [REDACTED] that was notarized on April 27, 2006. The affiant submitted photocopies of his Illinois State Drivers License, his Resident Alien Card, his Social Security Card, and an Illinois State Driver's License that was issued to him in 1985 with his affidavit. The affiant states that he has known the applicant since 1972 when the applicant was six year old. He states that he met the applicant in Mexico when the affiant began dating the applicant's mother. He states that the applicant's mother, [REDACTED], came to Chicago in 1973 but left the applicant in Mexico. He goes on to say that the applicant entered the United States in March of 1981. He states that he himself worked at Lake Breeze Restaurant for Chang S. Choi at that time. The affiant states that the applicant has resided with him for the duration of his residence in the United States. He further states that the applicant began working at the Lake Breeze Restaurant with him.
4. An affidavit from [REDACTED] that was notarized on February 2, 2006. The affiant submitted a photocopy of his Illinois Identification Card with his affidavit. The affiant states that he entered the United States in 1975. He goes on to say that he met the applicant in 1981 in Chicago through the applicant's family. He states that he knows that the applicant arrived in the United States before 1982 because he met him in 1981. This affiant states that he is a permanent resident and that the applicant is the only member of his family who has not yet received amnesty.
5. An affidavit from [REDACTED] the applicant's half sister that was notarized on April 27, 2006. The affiant submits a photocopy of her passport showing that she was born in Chicago and a photocopy of her Illinois Driver License issued to her on October 15, 2004. The affiant states that she met the applicant on March 5, 1981 when he arrived in the United States. She states that she remembers that she was in second grade when the applicant arrived and therefore she knows he must have arrived in the United States before 1982. The affiant asserts that she resided at the same address at the applicant but that she did not work at that time because she was a minor. The affiant states that she continues to live in the same house as the applicant. She submits a photograph that she asserts is of herself and the applicant during the requisite period.
6. A letter from Broadway Bank that states that the applicant has had a savings account since September 23, 1987.
7. An affidavit from [REDACTED], the applicant's mother that was notarized on April 23, 2003. The affiant states that the applicant came to the United States on March 4, 1981. She goes on to say that though he was 14 years old, because immigration was sending undocumented individuals back to Mexico she was afraid to send him to school. She goes on to say that a babysitter cared for the applicant while she worked. She further

states that in April 1982 [REDACTED] hired the applicant as a dishwasher. She states that the applicant had kidney failure and was on dialysis for approximately four years, after which time he had a kidney transplant. She states that he continues to need his family and treatment for his medical condition.

8. An affidavit from [REDACTED] that was notarized on April 2, 2003. The affiant states that she employed the applicant from April 1982 until 1989 at Lake Breeze Restaurant. She states that the applicant was paid in cash and therefore there are no official records associated with his employment from 1982 until 1987.
9. An affidavit from [REDACTED] that was notarized on April 23, 2003. The affiant states that he has known the applicant for 23 years. He states that he met the applicant through his mother. The affiant states that the applicant worked at Lake Breeze Restaurant and that the affiant gave the applicant things on credit.
10. A City of Chicago Vehicle Sticker License that indicates it was issued to the applicant on February 20, 1988.
11. A Certificate of Title showing that the applicant purchased a vehicle in the United States on February 5, 1988.
12. Photocopies of envelopes showing the applicant's name and the address that he indicated he resided at during the requisite period. One envelope was mailed by \_\_\_\_\_ to the applicant. This envelope bears a date stamp that shows the date May 29, 1986. A second photocopy of an envelope is from an individual in Mexico and is date stamped in 1985. The month corresponding with this **date stamp is not legible**. A third envelope showing it was mailed to the applicant is from [REDACTED] and was postmarked September 27, 1986. A fourth envelope is from [REDACTED] and bears the postmark date June 18, 1986. A fifth envelope is from [REDACTED] and bears the postmark date May 29, 1986. A sixth envelope in the record was sent by [REDACTED] is addressed to the applicant and was postmarked in 1985.
13. A W-2 for issued to the applicant for work performed in 1988. This Form W-2 indicates that the applicant was employed by the Lake Breeze Restaurant.
14. A photocopy of a Form 1040 completed by the applicant for the year 1988.
15. An affidavit from [REDACTED] that was notarized on March 29, 2002. He submits a photocopy of his resident alien card. This card indicates the applicant became a temporary resident on March 8, 1988. The affiant states that he first met the applicant at a family reunion in 1981. He goes on to say that the applicant was residing at [REDACTED] in Chicago at that time.

16. Five remittances from the applicant, two of which were issued in July 1985, and three of which were issued in October 1985.
17. A letter from [REDACTED] that is dated March 27, 2002. In this letter, the doctor states that the applicant has been a patient of his since April 1987.
18. An undated statement taken from the applicant. In this statement, he indicated he first entered the United States in August 1981. A note on this statement has changed this date to March 1981.
19. An affidavit from [REDACTED] that was notarized on May 31, 1990. The affiant states he is the applicant's father-in-law. A note in the record taken on this affidavit indicates that this individual is actually the applicant's step-father. He goes on to say that he provided economic help to the applicant. He asserts that the applicant entered the United States on November 21, 1981 and that he resided with the affiant from that time until May 1990. He states that the applicant was employed by Lake Breeze Restaurant from November 1982.
20. An employment letter from [REDACTED] the manager of Lake Breeze Restaurant that is not dated or notarized. The letter indicates that the restaurant is located at [REDACTED] Thorndale, Chicago. It states that the applicant was employed as a dishwasher from 1982 until this letter was submitted and that there were no periods of layoff during the applicant's employment.
21. An affidavit from [REDACTED], the applicant's step-father, which was notarized on January 25, 1990. The affiant states that this affiant gave the applicant economical support, food and lodging when he arrived in the United States on November 21, 1981. He asserts that the applicant began working at Lake Breeze Restaurant on November 11, 1982. Though this affiant asserts that the applicant began residing in the United States on November 21, 1981, he fails to indicate how he knows the exact date that the applicant began residing in the United States.
22. An affidavit from [REDACTED] that was notarized on January 25, 1990. The affiant states that he or she knows that the applicant resided in Chicago, Illinois from November 21, 1981 through the date that he or she signed this affidavit. Here, the affiant does not state how he or she first met the applicant except to say that he is a customer at La Voz de America Store, the affiant's business. He or she does not state the frequency with which he or she saw the applicant during the requisite period. Further, the affiant does not state how he or she can verify the exact date that he or she met the applicant. Because this affidavit is significantly lacking in detail, it carries little weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.

23. An affidavit from the applicant that was notarized on March 13, 2002. The applicant states that his mother asked him to come join her in Chicago when he was 14 years old after he graduated from primary school in Mexico. He goes on to say that he entered the United States without inspection on March 4, 1981 and began to reside with his mother and his step-siblings at that time. He asserts that the year after he entered, when he was 15 years old, he became employed at the Lake Breeze Restaurant. He states that his step-father worked there at the time as a cook and notes that his father purchased the restaurant at a later date. He asserts that in 1987 he began working as a bus boy at the West Egg Café and continued that employment for approximately four years. He describes his medical condition and states that his only absence from the United States was in 1993, when he went to visit his father in Mexico.
24. A primary education certificate issued to the applicant from the school administrators of a school called "Liberacion Campesina." This certificate states that the applicant graduated from sixth grade on June 27, 1980.
25. A second affidavit from the applicant that was notarized on March 20, 2002. He states that he went to an immigration office with the intent of applying for legalization in 1987 but states that he did not appear for an interview pursuant to that application. He states that instead, he applied for late amnesty through a notary named [REDACTED]. He states that this notary made many errors when he completed the paperwork for the applicant. He states that he never traveled from March 15, 1988 to April 10, 1988. He states that in 1993 he was told by the immigration office in Chicago that he did not need to obtain advanced parole to leave the United States, but he learned that this was in error when he attempted to return to the United States in 1993. He states that his first and last entry into the United States on his prior Form I-687 should have been March 4, 1981. He clarifies that his employment at the Lake Breeze Restaurant was from 1982 until 1989 and he notes that the notary incorrectly referred to his step-father as his father-in-law. He states that, though the notary stated that the applicant had never been arrested, he has in fact been arrested for three minor traffic violations. He states that he believes that [REDACTED] the notary, was submitting fraudulent information.
26. A photocopy of a letter, submitted with its translation, from [REDACTED], the applicant's sister, to her mother. This letter is dated July 20, 1981. This letter states that its author is very happy that her brother [REDACTED] has arrived well in Chicago. This letter was submitted with a copy of the envelope that it was purportedly mailed in. However, the date stamp on this envelope is not legible.
27. A photocopy of a letter, submitted with its translation, from [REDACTED]." to the applicant's mother. This letter is dated July 20, 1981. It refers to the applicant's February departure from her home. This letter was submitted with a photocopy of the envelope that it was purportedly mailed in. The date that appears on the date stamp of this envelope is July 22, 1981.

Though it is noted that the applicant has submitted proof of his residence in the United States subsequent to the requisite period, the matter in this proceeding is whether the applicant has submitted sufficient evidence to prove his residence during the requisite period. Evidence that proves his residence in the United States subsequent to that period is not relevant to this proceeding. Therefore, such evidence is not discussed here.

In denying the application, the director noted that the applicant indicated on his Form I-687, filed on January 6, 2006 pursuant to the CSS/Newman Settlement Agreements, that he was employed by Lake Breeze Restaurant since 1982. He also submitted an affidavit in support of this claim. However, when CIS contacted the owner of Lake Breeze Restaurant, she indicated that the restaurant did not open until 1986.

On appeal, counsel for the applicant submits a brief in which he states that the applicant has met his burden of proving that he resided continuously in the United States by a preponderance of the evidence. He states that the director did not accord due weight to the evidence submitted in support of his application or discuss all of the evidence the applicant submitted in support of his application. Counsel further asserts that though the director called [REDACTED] who indicated that the restaurant opened in 1986, this is actually the date that [REDACTED] became the owner of the restaurant. He indicates that the restaurant existed prior to that but had a different owner at that time. The applicant resubmits previously submitted evidence and also submits the following evidence in support of his application:

- A photocopy of an envelope with the applicant's address indicated as the sender and the recipient indicated as [REDACTED]. The postmark date on this envelope is April 15, 1981.
- An affidavit from [REDACTED] that was notarized on June 21, 2006. This affiant states that the applicant worked in the Lake Breeze Restaurant from 1982 to 1986. She states that she was the owner of the restaurant at that time. She states that she sold the restaurant to her daughter, [REDACTED] in 1986.

The AAO has reviewed the evidence in the record and has found that the applicant has not been consistent in his testimony to immigration officials regarding his date of first entry into the United States, his absences from the United States or his arrest record. During his interview with an immigration officer during the original legalization filing period, he stated that he first entered the United States on November 20, 1982. He now claims that he began residing in the United States in November 1981. This inconsistency casts doubt on his testimony regarding the date he first entered the United States such that it causes him to fail to establish that he first entered the United States prior to January 1, 1982. Further, the applicant has not been consistent in stating when and whether he was absent from the United States during the requisite period. He has stated that he was absent from the United States during the requisite period and that he had no absences during that period. The applicant has also stated that he has never been arrested, and

that he was arrested for minor traffic violations. The record shows that he has been arrested for crimes involving fire arms. The applicant has also submitted a statement on which he claims that he did not apply for legalization during the requisite period and that he did not attend an interview pursuant to an application completed at that time. The record shows that the applicant did appear for an interview at that time and it further shows that the applicant received a decision regarding that application in September 1988. It is clear that he received this decision because he subsequently appealed the decision and this appeal was dismissed on January 31, 1991.

The inconsistencies in the record are significant. Though the applicant has submitted substantial evidence in support of his application, this evidence is not sufficient to overcome these inconsistencies as they seriously detract from the credibility of this 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 applicant's contradictory statements on his applications and in testimony given before immigration officers, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.