U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

JUL 24 2008

FILE: [redacted] Office: LOS ANGELES Date:

MSC-05-279-12273

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, Los Angeles. 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 on October 18, 1999 the applicant testified under oath in front of Immigration Judge Miriam K. Mills that the first time he entered the United States was in August 1986. She further noted that the applicant indicated on his Form EOIR-42B Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents that the first time he arrived in the United States was on August 8, 1986. Though the director noted that the applicant submitted affidavits in support of his claim of having maintained continuous residence in the United States for the duration of the requisite period, the director found that these affidavits did not overcome these statements made by the applicant. Therefore, the director determined the applicant failed to meet his burden of proof and 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 was required to issue a Notice of Intent to Deny (NOID) to the applicant before denying him based on class membership. Counsel goes on to say that though the applicant's Form I-589 Application for Asylum and Withholding of Removal states that he did not enter the United States until August 8, 1986, this application was completed by a *notario* who gave bad advice to the applicant. The applicant also 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 July 6, 2005. 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 addresses in the United States during the requisite period to be: in Los Angeles, California from February 1980 until April 1983; in Los Angeles, California from June 1984 until May 1986;

[redacted] in Los Angeles, California from May 1986 to December 1989. It is noted that the applicant did not indicate his address of residence in the United States from May 1983 until May 1984. On part #32 of this application, where the applicant was requested to list his absences from the United States since he first entered, he indicated that he was absent in 1987 when he went to Mexico. It is noted that the applicant has not indicated the months in 1987 that correspond with this absence. At part #33 where the applicant was requested to list all of his employment in the United States since January 1, 1982, he indicated that he was employed as an assistant mechanic at a Chevron Station in Huntington Park, California from 1981 until 1984; that he worked in an auto body shop in Hawthorn, California from 1984 until 1986; and that he worked for Manhattan Ford in Manhattan Beach, California from 1986 until November 1998.

Also in the record is a Form I-687 submitted to establish class membership that was signed by the applicant on August 2, 1990. At part #33 of this Form I-687, where the applicant was asked to list his addresses of residence he indicated that his addresses of residence during the requisite period were as follows: [redacted] in Los Angeles from February 1980 until April 1983; [redacted] in Los Angeles from April 1983 until June 1984; [redacted] in Los Angeles from June 1984 until May 1986 and [redacted] in Los Angeles from May 1986 to December 1989. At part #35 where the applicant was asked to list his absences from the United States he indicated that he had three absences during the requisite period as follows: from September 1, 1981 until October 8, 1981 when he went to Mexico to get married; from June to July 1985 when he went to Mexico to visit family; and from June 3 to June 24, 1987 when he went to Mexico to see his brother who was sick. At part #36 where the applicant was asked to list his employment in the United States since he first entered he indicated that he was employed by the following during the requisite period: Qualify Auto Shop from 1981 until 1984; Autocraft Body Work from 1984 until 1986; and Manhattan Ford from August 1986 until the date he signed this Form I-687.

Further in the record are notes from the applicant's interview with a Citizenship and Immigration Services (CIS) officer on March 27, 2006 regarding his Form I-687 application that he filed pursuant to the CSS/Newman Settlement Agreements. The record indicates that at the time of the applicant's interview, he indicated that he first entered the United States in November 1981 and that prior to that he was living in Guadalajara, Mexico. It is noted that the applicant indicated on both of his Forms I-687 that his residence in Los Angeles began in February 1980. He stated that he was only absent from the United States one time when he traveled to Mexico from the beginning to the middle of May in 1987 for 15 days. It is noted that this is not consistent with the absences he indicated he had on his Forms I-687 submitted to establish class membership in 1990.

In the record is a Form G-325A Biographic Information Form that the applicant signed on October 14, 2002 and submitted pursuant to his Form I-485 Application to Register Permanent Residence or Adjust Status. On this Form G-325A the applicant indicated that he resided in Mexico until November 1981.

The inconsistencies between the applicant's two Forms I-687 in the record and between those Forms I-687 and his testimony cast doubt on whether the applicant has accurately and completely represented the beginning date of his residence in the United States and his absences from the United States to CIS.

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).

This applicant has a second record of proceedings that bears the alien registration number A75611551. In the applicant's second record are the following:

- The transcript of a hearing before Immigration Judge Miriam K. Mills on October 18, 1999 in Los Angeles, California pursuant to removal proceedings for the applicant and his family. Page 47 of this transcript shows that the applicant testified that he first entered the United States in August 1986.

- A Form I-589 Application for Asylum and for Withholding of Removal. On this form, the applicant indicated that he last entered the United States on August 8, 1986. It is noted that at part #29 of this application, though the applicant initially indicated that he had been employed in the United States by Quality Auto Shop in Santa Monica, California from 1981 to 1984 that information has been crossed out on the application.

- Notes taken by the Asylum Officer who interviewed the applicant pursuant to his Form I-589. The officer's notes indicate that the applicant testified that he first entered the United States in 1984 and then returned to the United States in 1986 with his family.

- A Form EOIR-42B on which the applicant indicated that he had resided in the United States since August 8, 1986.

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 applicant submitted the following evidence to CIS that is relevant to his claim of having maintained continuous residence in the United States for the duration of the requisite period:

1. A declaration from that was signed on May 24, 2005. The declarant submits photocopies of his California Driver License issued to him on March 22, 2004 and his Resident Alien Card with his declaration. The declarant states that he has known the applicant since 1981. He states that he and the applicant used to work together. He states that six months after he himself arrived in the United Stats he went to visit the applicant with some of his cousins. He states that he saw the applicant in the United States prior to 1982.

2. A declaration from [redacted]s that was signed on May 24, 2005. The declarant submits a photocopy of her California Identification Card issued in 2001 and her Permanent Resident Card with her declaration. The declarant states that she has known the applicant since 1968, when they met in Mexico. She states that the applicant is her husband's relative. She states that the applicant resided at her home from 1981 until 1989. Though the affiant states that she first met the applicant in 1968 in Mexico, she also states that she first met the applicant when she was residing at in Los Angeles, California. She also asserts that she resided at this address from January 1982 until May 1988. It is noted that this affiant indicates that the applicant continuously resided with her for the duration of the requisite period and that she continuously resided on [redacted] for the duration of that time. However, the applicant indicated on both of his Forms I-687 that he resided at that address only from May 1986 until December 1989. Therefore, doubt is cast on the assertion made by this declarant that the applicant resided with her for the duration of the requisite period at that address.

3. A declaration from [redacted] that was signed on May 23, 2005. The declarant submits a photocopy of his Certificate of Naturalization with his declaration. The declarant states that he and the applicant used to work together. However, he does not state when or where they used to work together, whether they worked together in the United States or elsewhere or whether they worked together during the requisite period. He goes on to say that he visited the applicant with some of his cousins six months after they arrived in the United States. He states that he knows that the applicant was in the United States prior to 1982 because they worked together. He states that he himself first entered the United States in April of 1985.

4. A declaration from [redacted] that was signed on May 24, 2005. The declarant submits photocopies of his California Driver License issued to him in 2003 and his Permanent Resident Card with his declaration. The declarant states that he has known the applicant for 30 years and that they met in Mexico through a neighbor. He states that he

and the applicant worked together. However, he does not state whether they worked together in the United States or elsewhere or indicate when they worked together. He states that he encountered the applicant six months after he himself entered the United States and that he knows that the applicant was in the United States prior to 1982 because they met in Los Angeles before that time. He asserts that he himself entered the United States in 1981.

5. An affidavit from the applicant that was notarized on October 14, 2002. The applicant states that he has been present in the United States since November 1981. He asserts that his wife entered the United States in August 1986 and has continuously resided with him since that time. He states that he cannot provide records of employment from 1981 to 1985 because he was paid in cash for those years.

6. A marriage certificate that shows that the applicant was married in Jalisco, Mexico on September 25, 1981.

7. An employment letter from Manhattan Ford that is dated September 2, 1999. This letter is signed by [redacted] who indicates that she works for payroll at Manhattan Ford. This letter states that the applicant was employed by Manhattan Ford from August 14, 1986 until March 1, 1991.

8. Photocopies of forms W-2 issued to the applicant for the years: 1986, 1987, 1988, and 1989.

9. Photocopies of two Employee Benefits Trust Identification Cards that show that [redacted] was employed by Manhattan Ford. These cards were effective from November 1, 1986 and May 1, 1988 respectively and indicate that the applicant had medical coverage in the United States from those dates.

10. An employment letter from Nachos Automotive Repair that is dated October 11, 2002 and is signed by [redacted] who does not indicate his title. Mr. [redacted] states that the applicant worked for "Nacho Chevron" in South Gate, California as a mechanic's helper from November 1981 to December 1983. It is noted that the applicant indicated on his Form I-687 submitted to establish class membership in 1990 that he worked for Quality Autoshop from 1981 to 1983. It is also noted that the applicant previously submitted a letter from his brother, [redacted] in 1990 that also asserted that he worked for him at Quality Autoshop at that time.

11. A declaration from Manhattan Ford that is dated September 5, 1990 and was signed by [redacted] who indicates he was the body shop manager. This declaration states that the applicant was employed with Manhattan Ford since August 12, 1986.

12. A declaration from Autocraft Body Works that is dated September 4, 1990. This declaration is signed by an individual whose name is not legible. The declaration states that the applicant worked for Autocraft from January 1984 until July 1986 doing body and fender repair.

13. An affidavit from [redacted] that was notarized on September 8, 1990. The affiant states that the affiant is his brother who has resided in the United States since 1980. He states that he has seen the applicant continuously since that time. He asserts that the applicant worked for him as a helper when he worked for "Cuality Body Show" in Lawndale, California from June 1981 until December 1983. It is noted that the applicant indicated on his Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements that he worked at the Chevron Station in Huntington Park, California from 1981 until 1984. It is also noted that the applicant submitted an employment letter from [redacted] that asserts that the applicant was working at Nacho Chevron in South Gate, California from 1981 to 1984. It is further noted that notes taken from the CIS officer at the time of the applicant's interview pursuant to the instant Form I-687 indicate that the applicant testified that he first entered the United States in November 1981.

14. An affidavit from [redacted] that was notarized on June 20, 1990. The affiant states that he has known the applicant in the United States since 1980 and that he has seen him continuously from that time until he submitted his affidavit. He goes on to say that the applicant resided with him at [redacted] in Los Angeles from February 1980 to April 1983 and then at this same address from June 1984 until May 1986. He further states that the applicant resided with him on [redacted] in Los Angeles from May 1986 until November 1989. It is noted that the applicant indicated on his Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements that he resided at [redacted] from February 1980 until April 1983. That this affiant lists an address that is not consistent with what the applicant showed to be his address of residence on his Form I-687 casts doubt on whether the affiant and the applicant have accurately represented the applicant's residence in the United States from 1980 until 1983.

15. An affidavit from [redacted] that was notarized on September 10, 1990. This affiant states that the applicant was absent from the United States from June 3, 1987 to June 24, 1987 because he went to see his sick brother.

16. An affidavit from that was notarized on September 12, 1990. The affiant states that the applicant was absent from the United States from June 3, 1987 to June 24, 1987 because he went to see his brother who was sick.

The applicant's record that bears the alien registration number contains the following additional evidence that is relevant to this proceeding:

17. An affidavit from [redacted] that was notarized on September 2, 1999. In this affidavit, the affiant states that he has personal knowledge that the applicant and his wife have resided in the United States since December 1989. It is noted that this affiant also submitted a declaration in 2005 in which he stated that he entered the United States in 1985 and that he saw the applicant six months after this entry.

18. A photocopy of a California Identification Card issued to the applicant on August 28, 1986.

19. A photocopy of a California Driver License issued to the applicant on September 24, 1987

20. An affidavit from that was notarized January 30, 1999. The affiant submits a photocopy of his Resident Alien Card with his affidavit. The affiant states that he had known the applicant, his wife and his children from 1986 to 1989 when they resided on [redacted] in Los Angeles, California as his neighbors.

21. An affidavit from [redacted]s that was notarized on January 30, 1999. The affiant submits a photocopy of her Resident Alien Card with her affidavit. The affiant states that she is the applicant's aunt. She goes on to say that the applicant and his family resided with her from August 1986 until December 1989. It is noted that the affiant subsequently submitted a declaration on which she stated that the applicant resided with her from 1981 until 1989. Because this affiant was not consistent regarding when the applicant resided with her, doubt is cast on the credibility of the testimony regarding the applicant's residence from this affiant.

The applicant also submitted documents as proof of his residence after the requisite period ended. As the issue in this proceeding is whether the applicant submitted sufficient evidence to prove he resided continuously in the United States for the duration of the requisite period, this evidence is not relevant to the matter at hand and is therefore not discussed here.

The director denied the application for temporary residence on April 22, 2006. In denying the application, the director stated that she found that the applicant's testimony that he entered the United States in 1981 and then resided in the United States for the duration of the requisite period was not supported by evidence in the record. She noted that the applicant previously submitted a form EOIR-42B on which he stated that the first time he entered the United States was on August 8, 1986. She further noted that on October 18, 1999 the applicant testified under oath before Immigration Judge Miriam K. Mills that the first time he entered the United States was in August 1986. Though the director noted that the applicant submitted evidence from individuals in an attempt to prove his claim that he resided in the United States for the duration of the requisite period, she found that this evidence was not sufficient to meet his burden of proof.

On appeal, the applicant submits a brief though counsel that is dated June 14, 2006. In this brief, counsel asserts that the applicant was denied due process because the director failed to issue a NOID to him prior to denying his application.

Counsel is not persuasive in arguing that the director was required to issue a NOID to the applicant prior to making her final decision, It is noted here that Paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement both state in pertinent part:

> Before denying an application for class membership, the Defendants shall forward the applicant or his or her representative a notice of intended denial explaining the perceived deficiency in the applicant's Class Member Application and providing the applicant thirty (30) days to submit additional written evidence or information to remedy the perceived deficiency.

However, the director decided this case on the merits rather than denying the application based on determining that the applicant was not a class member. Therefore, the director was not required to issue a NOID to this applicant prior to issuing a final decision.

Counsel goes on to state that the EOIR 42-B Form in the record shows that the applicant entered in August 1986 because the applicant received bad advice from a *notario* that caused him to misstate his date of first entry into the United States. Counsel goes on to say that this same *notario* advised the applicant to testify that he first entered the United States in August 1986 and because the applicant had no knowledge of immigration laws and procedures he trusted this *notario*'s advice. Counsel further states that the director failed to give due weight to the evidence submitted by the applicant in support of his application.

Although counsel notes that the applicant was not assisted by an attorney but by an agent, when he completed his EOIR-42B Form there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

The applicant further submits the following in support of his application on appeal:

- An affidavit from [redacted] that was notarized on June 11, 2006. The affiant states that the applicant is his wife's nephew and that the applicant entered the United States in 1981 and moved into the affiant's neighborhood on [redacted] at that time. He goes on to state that the applicant then moved into a property on [redacted] and resided there from 1986 until 1989. He states that he personally knows that the applicant was employed by Manhattan Ford from 1986 to 1989 because he went to that place of employment to eat

lunch with the applicant. He states that he has seen the applicant several times a year and therefore knows that the applicant has resided in the United States.

- An affidavit from [redacted] that was notarized on June 11, 2006. The affiant states that he and the applicant worked together in Mexico at a painting company. He states that he knows that the applicant entered the United States in 1981 in November. He states that he personally knows that the applicant resided at 18th Street in Los Angles for three years and then moved to 22nd Avenue where he resided until 1986 when he moved to 23rd Street.

- An affidavit from [redacted] that was notarized on June 11, 2006. The affiant states that he and the applicant used to work in the same company. He states that he remembers when the applicant left Mexico for the United States in approximately November 1981. He states that he himself entered the United States in 1985 and visited the applicant who resided at 23rd Street in Los Angeles at that time. It is noted that the record also contains an affidavit that is dated September 2, 1999 as noted above in which this affiant states that he and his wife have resided in the United States in December 1989.

- An affidavit from [redacted] that was notarized on June 11, 2006. The affiant states that the applicant resided in her home for three years when he first arrived in the United States for three years and then returned to live there with her family in 1986 where they resided together on 23rd Street until 1989.

The AAO has reviewed the documents submitted by the applicant in support of his Form I-687 application and has found numerous inconsistencies. The applicant has not been consistent when he has submitted forms and testified under oath regarding his first date of entry into the United States. He indicated on his EOIR-42B Form that he first entered the United States in August of 1986. He also indicated that this was his first date of entry when he testified before an Immigration Judge in October of 1999. He testified before an asylum officer on November 12, 1998 that he first entered the United States in 1984. He indicated that he began residing in the United States in February 1980 on his Form I-687 submitted in 1990 to establish class membership and he stated on his Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements that he first entered in November 1981.

Affiants from whom the applicant has submitted affidavits have also not been consistent regarding when they assert they know the applicant began residing in the United States. The affidavit from [redacted] that was notarized in 1990 states that he has seen the applicant in the United States since 1980. However, the applicant also submitted affidavits from [redacted] dated in 2005 and 2006 in which he stated that he knows the applicant first entered the United States in 1981.

Though the applicant has submitted convincing contemporaneous evidence of his residence subsequent to 1986 including a California Identification Card, a California Driver's License, W-2 Forms and employment letter and other affidavits that consistently state that he worked for Manhattan Ford beginning in 1986, he has submitted evidence that is significantly less convincing as proof of his residence prior to 1986. He submitted employment letters and affidavits alternatively stating that he worked at Quality Auto Shop and at Nachos Chevron from 1981 to 1984. He himself has not been consistent regarding when he first entered the United States. He indicated addresses of residence that began in February 1980 on both of his Forms I-687; he testified that he first entered in November 1981 at the time of his interview with a CIS officer on March 27, 2006 pursuant to his Form I-687 application; he stated that he first entered the United States in 1984 at the time of his interview with an asylum officer in November 1998; he stated that his date of first entry into the United States was on August 8, 1986 at the time of his removal hearing before an Immigration Judge in October 1999.

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.