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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: CHERRY HILL, NEW JERSEY Date: MAR 24 2008

MSC 05 250 12494

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 [or Records] 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, Cherry Hill, New Jersey. The appeal will be dismissed.

The district director denied the application because he found that the applicant failed to demonstrate credibly that he was continuously physically present in the United States since November 6, 1986.[1] On appeal, counsel asserted that the evidence of record demonstrates that the applicant was physically present in the United States during the salient period.

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 was 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)(A) of the Act, 8 U.S.C. § 1255a(a)(3)(A). The regulations confirm 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)(1) 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.

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

As to continuous physical presence since November 6, 1986, 8 U.S.C. § 1255a(a)(3) states, "[a]n alien shall not be considered to have failed to maintain continuous physical presence in the United States . . . by virtue of brief, casual, and innocent absences from the United States."

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[1] The district director also indicated that doubt existed that the applicant had been "front-desked" and, therefore, that doubt existed pertinent to his eligibility for class membership. Because the district director then issued a decision on the merits, however, this office finds that the application was not denied on that basis, and will treat the decision as a denial for failure to demonstrate continuous physical presence in the United States as required by section 245A(a)(3)(A) of the Act. Counsel's response to the issue of class membership will not, therefore, be addressed.

The applicant has the burden of proving by a preponderance of the evidence that he or she resided continuously in the United States from January 1, 1982 until he or she filed his or her application, was continuously physically present in the United States from November 6, 1986 until the date of filing the application, 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.

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 (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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The Form I-687 application in this case was filed on May 2, 2005. On that Form the applicant indicated that he had left the United States on November 11, 1986 for Paraguay, and returned during January 1987. Notations in red pen on that application indicate that, at his interview, the applicant

revised his version of events, stating that he had been absent from the United States from July 1986 to January 1987.

On the instant Form I-687 the applicant stated that from December 1979 to October 1988 he lived at [redacted] in Mount Vernon, New York; that from October 1988 to June 1989 he lived at [redacted] in Asbury Park, New Jersey; and; that from June 1989 to January 1990 he lived at [redacted] in Neptune, New Jersey.[2]

The applicant's residential history as stated on a previous Form I-687, which the applicant submitted on June 19, 1990, is somewhat different. On that form the applicant stated that he moved from [redacted] in Mount Vernon on October 1987, rather than October of 1998, and that he began living a[redacted]e in [redacted]k during December 1987. The applicant did not account for his residence between October and December of 1987. On the previous Form I-687 the applicant further stated that he moved from [redacted]e in [redacted] to [redacted] in Neptune, New Jersey during December 1988, rather than June 1989, as he stated on the instant Form I-687.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988). The conflicting residential histories provided by the applicant, absent a reliable reconciliation, cast doubt on the veracity of the applicant's assertions and the reliability of the evidence submitted in support of the instant application.

The following evidence was submitted to support the applicant's claim of continuous residence in the United States in an unlawful status from January 1, 1982 until the application was filed, and continuous physical presence in the United States from November 6, 1986 until the date the application was filed:

- original rent receipts,
- photocopied rent receipts,
- 1987 and 1988 Form W-2 Wage and Tax Statements issued to the applicant by Bookbinders, Incorporated, a New Jersey company,
- the applicant's personal tax returns for 1987 and 1988,
- Check stubs from Summit Graphics Incorporated issued to the applicant for work performed during various weekly pay periods from January to July of 2004,

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[2] Although other addresses were included in that residential history, they are too recent to be relevant to any material issue in this matter.

- a receipt dated June 12, 1981 that was issued to the applicant pursuant to his purchase of a radio,
- a photocopy of a receipt dated March 13, 1982 related to the layaway purchase by the applicant of a television and stereo,
- copies of pay stubs from Bookbinders, Inc. dated from December 31, 1987 through the end of 1988,
- a photocopy of a receipt for a purchase by the applicant from a camera store on May 5, 1982,
- a photocopy of a receipt for an August 10, 1982 purchase of a sofa bed in New York City,
- carbon sheet stubs of money orders drawn by the applicant during 1987 and 1988,
- a schedule of benefits with an effective date of July 9, 1988 for a policy insuring the applicant's life,
- payment statements issued to the applicant at his [redacted] address by the state of New Jersey to document payment of his 1988 state income tax refunds,
- an employment verification letter dated May 7, 1990 from the manager of [redacted], a company in New York City, stating that it employed the applicant from August 1984 to November 1986,
- an employment verification letter dated May 9, 1990 from the manager of [redacted] a company in New York City, stating that it employed the applicant from December 1979 to July 1983,
- an employment verification letter dated May 9, 1990 from the Director of Manufacturing of [redacted] New Jersey company, stating that it employed the applicant since December 12, 1987,
- a letter, dated July 25' 1990, from the medical correspondence unit of a medical clinic indicating that the applicant was first treated at that facility during March of 1980,
- an original Form I-94 Departure Record,
- a Form G-325 Biographic Information form completed by the applicant on January 11, 1994 in connection with an application by his wife for asylum,
- a letter dated February 23, 2006 from the controller of Summit Graphics,

- an undated letter from an acquaintance
- a form affidavit dated May 2, 1990,
- a May 3, 1990 letter from LULAC, stating that the applicant has been a member of that organization since 1981,
- form affidavits dated June 8, 1990, April 8, 1990, June 25, 1990, July 10, 1990, and July 20, 1990 from acquaintances of the applicant,
- the applicant's own affidavit, dated June 8, 2006,
- a June 20, 2006 affidavit from the applicant's sister,

and

- photocopies of envelopes with cancelled Paraguayan postage stamps sent to the applicant in the United States on various dates.

The record contains no other evidence pertinent to the applicant's presence in the United States during the salient period.

The rent receipts purport to have been issued to the applicant for rent paid for each month of 1980; every month of 1981 except May; each month of 1982 except February; each month of 1983 except June; each month of 1984; each month of 1985 except August and September; each month of 1986; each month of 1987, each month of 1988 except January and November; each month of 1989 except August, September, October, November, and December; and January and March of 1990. In addition, the record contains nine receipts the dates of which are illegible.

As his 1987 and 1988 personal income tax returns, the applicant submitted Forms 1040EZ, indicating that he was then single and had no dependents.

On his 1991 Form 1040A, U.S. Individual Income Tax Return that he had four dependents, to wit: his sons [redacted] and [redacted], and [redacted] and [redacted] both stepdaughters. The applicant claimed all four of those dependents again during 1993.

On his 1994 Form 1040A, the applicant claimed only one dependent, [redacted] a daughter. On his 1995 personal tax return, the applicant claimed no dependents. On their joint 2000 personal tax return the applicant and his spouse claimed no dependents.

On their joint 2001 tax return the applicant and his spouse claimed one dependent, [redacted], a grandchild. On their joint 2002, 2003, 2004, and 2005 tax returns the applicant and his wife claimed no dependents.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers should be on letterhead, if the employer has such stationery, and must include the alien's address at the time of employment, the exact period of employment, periods of layoff, the duties of the alien with respect to that employment, whether the information was taken from official company records, where those records are located, and whether CIS may have access to those records. If employment records are unavailable, the employer must state, in a signed affidavit attested to under penalty of perjury, that they are unavailable, why they are unavailable, and that the employer is willing to testify. The May 7, 1990 letter from Tobaldi Uomo does conform to any of the regulatory requirements.

The body of the May 9, 1990 letter from T[redacted] states, in its entirety,

> Please be advised that [the applicant] was employed by this firm since December 1979 to July 1983. as a cook/helper earning $3.00 Per-hours. Based on 40 hours worked.

[Errors in the original.]

Contrary to the requirements of 8 C.F.R. § 245a.2(d)(3)(i) that letter does not state the alien's address at the time of employment, the exact period of employment, periods of layoff, whether the information was taken from official company records, where those records are located, and whether CIS may have access to those records.

The body of the May 9, 1990 letter from Bookbinders Incorporated states, in its entirety, "[The applicant] has been employed with our firm since December 12, 1987. He is enrolled in our apprenticeship program as an operator trainee."

Contrary to the requirements of 8 C.F.R. § 245a.2(d)(3)(i) that letter does not state the alien's address at the time of employment, periods of layoff, whether the information was taken from official company records, where those records are located, and whether CIS may have access to those records.

Because the employment verification letters submitted do not conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(i), their credibility is diminished. They will still be considered pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L), but accorded less evidentiary value.

On his June 19, 1990 Form I-687 the applicant indicated that he first entered the United States on December 13, 1979, and that he subsequently went to Paraguay on November 26, 1986 to see his ailing father. The applicant also stated, on the June 19, 1990 Form I-687 application and on his CSS class determination affidavit of November 2, 1990, that he returned on January 8, 1987.

During his interview, however, the applicant amended his report of this trip, indicating that he left the United States during July of 1986. Further, in his January 11, 1994 G-325 the applicant stated that his last address outside of the United States was in Asuncion, Paraguay, from July 1986 to

January 1987. On that form the applicant also indicated that he had never been married and had no children.

The Form I-94 Departure Record listed above confirms that the applicant entered the United States on a B-2 nonimmigrant visitor's visa on January 8, 1987. On that form the applicant listed Argentina as his country of citizenship.

The applicant's LULAC class determination affidavit indicates that at an interview the applicant stated that he had traveled from the United States to Paraguay on November 26, 1986. He again alluded to that travel in response to a question pertinent to his failure to file for legalization before May 4, 1988. The applicant signed that affidavit on November 2, 1990, under penalty of perjury.

The applicant's affidavit for CSS class determination indicates that in the interview pertinent to inclusion in that class the applicant stated that he left the United States for Paraguay on November 26, 1986, and that he returned on January 8, 1987. The applicant signed that affidavit on November 2, 1990, under penalty of perjury.

Again, doubt cast on any aspect of the applicant's proof triggers a reevaluation of all of the evidence offered in support of the application, and the inconsistencies that caused that doubt must be resolved with independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582. The applicant's asserted departure from the United States on November 26, 1986 and return on January 8, 1987, and his asserted residence in Paraguay from July 1986 to January 1987, are not easily reconcilable. Absent a satisfactory reconciliation, this discrepancy further undermines the credibility of the applicant's assertions and the evidentiary value of all of the evidence submitted in support of the instant application.

The undated affidavit is from [redacted] of [redacted] in Ocean Grove, New Jersey and states that the applicant had lived at [redacted] Mount Vernon, New York for the previous eight years.

The May 2, 1990 affidavit is from [redacted] also of [redacted], who states, "I have known [blank space] since approximately 12/79 under the following circumstances: [sic] Lived under same roof – and is actually a neighbor of mine."

That [redacted] and [redacted] share the same family name and the same address implies that they are related either by blood or marriage. Their affidavits attest to their having known the applicant, however, for different periods and under different circumstances. Although those differences may be reconcilable, they raise concerns about the credibility of the affidavits of [redacted] and [redacted] Absent a satisfactory reconciliation of the apparently contradictory information, those affidavits will be accorded little evidentiary value.

The June 25, 1990 affidavit states that the affiant has known the applicant since "approximately 1981" and that "to the best of [the affiant's] knowledge" he has lived in the United States since then.

Absent any indication that the affiant has actual knowledge of the applicant's whereabouts during the salient period, that affidavit is of little evidentiary value.

In the July 10, 1990 affidavit the affiant states that she met the applicant during December 1979, and that he has resided in the United States since that date. That affidavit does not indicate the basis for the affiant's asserted knowledge of applicant's residence during that period.

In the July 20, 1990 affidavit the affiant states that he met the applicant on some unspecified date during 1981, that he has seen the applicant since that unspecified date, and that the applicant has resided in the United States since that unspecified date. Whether the affiant is claiming to have seen the applicant more than a single time since 1981 is unclear.

In his June 8, 2006 affidavit the applicant stated that the information on the G-325 Biographic Information form that he left the United States during July 1986 is incorrect. The applicant stated that he left for Paraguay during November 1986, and that he had so stated in his Legalization interview, but that a language barrier caused a misunderstanding. The applicant cited his rent receipts and documents related to his employment during 1986 in support of that asserted itinerary. The applicant did not indicate how he came to state, on the Form G-325 in the record, that he resided in Paraguay from July 1986 to January 1987.

The applicant's sister's June 20, 2006 affidavit states that the applicant entered the United states during 1979, returned to Paraguay during November 1986, and then returned to the United States during January 1987.

The postage stamps on the various photocopied envelopes in the record were cancelled on various dates. Most of the addresses on those envelopes, when compared to the postmarks, correspond to the addresses the applicant stated, on the instant Form I-687, that he occupied at those times.

The stamps on one of the photocopied envelopes in the record, however, were cancelled February 11, 1979. That envelope is addressed to the applicant at his Mount Vernon, New York address. The applicant stated on the instant Form I-687, though, that he began living at that address during December of 1979.

The stamps on another of the envelopes in the record were cancelled on either August or December 21, 1987. That envelope was mailed from Paraguay and is addressed to the applicant at his [redacted], New Jersey address, although the applicant stated, on the instant Form I-687, that he moved to that address during October 1988.

The stamps on one of the envelopes in the record were cancelled January 3, 1989. That envelope is addressed to the applicant at his [redacted], New Jersey address and was mailed from Flushing, New York. That address and postmark do not conflict with the residential history provided on the instant Form I-687, but conflict with the residential history provided on the previous Form I-687, in which the applicant stated that he moved from Asbury Park to Neptune, New Jersey, during December 1988. That envelope does not indicate that it was forwarded.

Pursuant to *Matter of Ho*, 19 I&N Dec. 582, these discrepancies between the applicant's assertions and the evidence render the credibility of the applicant's assertions and the reliability of the evidence submitted in support of the instant petition even more questionable.

Although the applicant's previous Form I-687 indicated, on June 19, 1990, that the applicant has no children, the 1991 tax return submitted states that the applicant then had two children, [redacted] and [redacted] and two stepchildren, [redacted] and [redacted].

In a Notice of Intent to Deny (NOID), dated May 25, 2006, the director noted the discrepancy between the applicant's assertion in 1986 that he had no children and his statement on his 1991 tax return that he had two natural children. The director also observed that at the applicant's interview he stated that, although they are listed as his children on his tax return [redacted] and [redacted] are his stepchildren, the natural children of his wife's sister. The director stated that, when asked, the applicant was unable to explain how his wife's sister's children can be his stepchildren.

The director also noted the discrepancy between the itinerary of the applicant's 1986 trip to Paraguay as stated on the Form G-325 and that stated on the application and elsewhere in the record. The director stated that, pursuant to *Matter of Ho*, 19 I&N Dec. 582, reconciliation of these discrepancies would only be accomplished with competent objective evidence sufficient to demonstrate the truth of that matter.

The director concluded that the record as then constituted was insufficient to demonstrate that the applicant was continuously physically present in the United States from November 6, 1986 to the date he filed his application as required by Section 245A(a)(3) of the Act and the regulation at 8 C.F.R. § 245a.2(b)(1), and that the applicant was therefore ineligible for temporary resident status pursuant to Section 245A of the Act. The applicant was accorded 30 days to respond to that notice.

In response, counsel submitted the applicant's June 8, 2006 affidavit. In that affidavit the applicant reiterated that he had traveled to Paraguay during November of 1986, rather than during July, but did not indicate how he came to state, on the Form G-325, that he resided in Paraguay from July 1986 to January 1987. The applicant did not address the identity of [redacted] and [redacted] whom he listed as dependents and his natural children during 1991.

Counsel cited the applicant's rent receipts and the employment verification letter from [redacted] as objective evidence of the applicant's continuous presence in the United States during the salient period.

As to the applicant's children listed on the 1991 tax return, counsel stated that [redacted] and [redacted] are the applicant's brother's children who live in Paraguay, and that their birth certificates had been

ordered from Paraguay.[3] Counsel did not explain why, on tax returns, the applicant listed those children as his own.

Subsequently, counsel submitted the birth certificates of [redacted] and [redacted], who were born to [redacted] and [redacted], who is now the applicant's wife, on December 9, 1957 and April 7, 1963, respectively. In a letter that accompanied those birth certificates counsel stated that they are the children listed on the applicant's 1991 tax return. Those birth certificates do indicate that [redacted] and [redacted] are the applicant's wife's natural children, and therefore the applicant's stepchildren.[4]

This office notes that the dependents listed on the 1991 tax return were [redacted] and [redacted] were listed as stepchildren and the director did not contest their identity. The identity of [redacted] and [redacted] whether they exist, and whether they are the applicant's natural children, as he stated on the tax return, or are not his natural children, as he stated on the previous I-687, are all in dispute.[5] When and where and to whom they were born is relevant to the applicant's asserted presence in the United States, which is a material issue. The birth certificates of [redacted] and [redacted] do not address any of those issues.

This office notes that on the tax returns in the record [redacted] and [redacted] are represented to be the applicant's natural children, at the applicant's interview they were represented to be his wife's sister's children, and in response to the notice of intent to deny counsel asserted that they are the applicant's brother's children. Again, pursuant to *Matter of Ho*, 19 I&N Dec. 582, this discrepancy may only be reconciled with objective evidence. Merely asserting that one of the conflicting assertions is correct will not suffice. A mere feasible explanation will not suffice. Absent objective evidence to demonstrate where, in fact, the truth lies in this matter the applicant's credibility and the value of the evidence he has submitted suffer yet further.

In the Notice of Decision, dated August 1, 2006, the director denied the application based on the applicant's failure to demonstrate that he was continuously physically present in the United States during the requisite period.

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[3] Those birth certificates are not in the record. Further, that the applicant claimed as dependents children who are not living in his household suggests that they are his natural children, notwithstanding his denials.

[4] The birth certificates further indicate that during 1991 [redacted] and [redacted] turned 34 and 28 years old, respectively. How they would have qualified as the applicant's dependents is unclear. That the applicant claimed children not living with him as his dependents suggests that they are his natural children, notwithstanding his denials.

[5] These issues are material because, if [redacted] and [redacted] are the applicant's natural children, their conception dates might indicate absence from the United States at those times.

On appeal, as to the issue of the applicant's children, counsel stated,

> [T]he denial states that [the applicant] has not proven continuous physical presence claiming that because [redacted] mentioned that he had no children (but his tax information mentioned step-children), he has failed to show continuous residence.

As to that discrepancy and the others in the record counsel stated,

> . . . minor discrepancies and lapses in memory, typographical errors, and badly filled out prior applications should not be conclusive evidence of fraud. At most, these omissions and discrepancies, while worthy of noting, are rebutted by the solid evidence showing [redacted]'s continuous physical presence.

Matter of Ho requires that discrepancies in the evidence submitted be reconciled with objective evidence. Otherwise, all of the evidence in the record loses credibility. Counsel's argument turns the requirement of *Matter of Ho* on its head. Counsel offers no objective evidence, nor even a feasible explanation, for the discrepancies in the record. Instead, he urges that the other evidence in the record overcomes those discrepancies. In fact, absent objective evidence reconciling the discrepancies, the balance of the evidence is rendered unconvincing, in accordance with *Matter of Ho*, rather than curing the discrepancies.

On June 19, 1990, on the previous Form I-687, the applicant indicated that he went to Paraguay on November 26, 1986 and returned to the United States on January 8, 1987. On a January 11, 1994 Form G-325, however, as was noted above, the applicant stated that he lived in Paraguay from July 1986 through January 1987. That inconsistency has not been reconciled with objective evidence, and greatly diminishes the credibility of the information and evidence provided in support of the instant application.

Further, the rent receipts submitted evince irregularities that cast doubt on their authenticity. The record contains two different rent receipts for September 1981. Both purport to be originals, rather than photocopies. Likewise, the record contains two conflicting original rent receipts for December 1981, February 1987, and March 1987. The record contains three different receipts for July 1988.

The record contains no explanation for the competing receipts during the months listed above. That there are two or more rent receipts for a given month suggests that some, and perhaps all, of those receipts are not the contemporaneous evidence that they purport to be, but, rather, that at least some of those receipts were produced for submission in support of the instant application, in an attempt to show residence and presence in the United States during months when the applicant did not actually reside here or was not actually present. Those discrepancies, absent any satisfactory reconciliation, also diminish the credibility of the information and evidence provided in support of the instant application pursuant to *Matter of Ho*, 19 I&N Dec. 582.

As was noted above, the applicant indicated, on the June 19, 1990 I-687 application, that he had never been married and that he had no children. On his 1987, 1988, 1989 tax returns the applicant again indicated that he was then single and, further, that he had no dependents.

On his 1991 and 1993 tax returns, the applicant indicated that he was then an unmarried head of household, and that he then had two natural sons, [redacted] and [redacted], whom he claimed as dependents, in addition to his two stepdaughters, whom he also claimed.[6] On his 1994 tax return the applicant indicated that he was an unmarried head of household and claimed one dependent, [redacted] a daughter. On his 1995 personal tax return, the applicant, again filing as an unmarried head of household, claimed no dependents.

On their joint 2000 personal tax return the applicant and his spouse claimed no dependents. On their joint 2001 tax return the applicant and his spouse claimed one dependent, [redacted] a grandchild. On their joint 2002, 2003, 2004, and 2005 tax returns the applicant and his wife claimed no dependents.

This office understands that children may be born, adding to the number of dependents. They may have previously lived elsewhere and then moved into a taxpayer's household, thus, again, adding to the number of dependents. They may move out, achieve majority, or die, thus diminishing the number of dependents. The various changes in the number of dependents claimed by the applicant, however, over so short a span, is suspect.

This issue was raised in the May 25, 2006 NOID, specifically, as to the identities of the two sons claimed during 1991. In their responses, neither the applicant nor counsel addressed the suspect entries on the applicant's tax return. The failure to address that issue detracts yet further from the credibility of documentation issued in support of the instant application.

Whether the applicant was absent from the United States for five months or for just over one month does not necessarily dictate the outcome of this matter. Of greater influence is the fact that the applicant was instructed to demonstrate where the truth in that matter lies and did not provide any evidence that accomplishes that. Absent any such proof, that discrepancy suggests that the applicant altered his travel history to favor the instant application. Without an objective reconciliation of the discrepancy, the credibility of the information on the Form I-687, and the credibility of all of the evidence provided in its support, is greatly diminished.

Similarly, whether or not the applicant has children does not control the outcome of the instant case. An apparent contradiction was noted, however, between the information the applicant provided on the previous Form I-687 and the information he provided on his tax returns. The evidence conflicts at to whether or no[redacted]ll and [redacted] are the applicant's natural children. Faced with this inconsistency, the applicant and counsel provided no evidence to reconcile it, nor even a coherent explanation. With no objective reconciliation of the apparent contradiction, the credibility of all of the information and evidence furnished in support of the application suffers yet again.

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[6] This office questions whether an unmarried person can have stepchildren.

Further still, the conflicting rent receipts are not, in themselves, conclusive evidence of fraud. The applicant has provided two different rent receipts for some months and three receipts for one month. An innocent explanation may conceivably exist for the issuance of more than one rent receipt for a given month. Absent the objective evidence required by *Matter of Ho*, however, or even a feasible explanation for those competing rent receipts, the credibility of all of the evidence provided in this case suffers further still.

In view of the manifold contradictions, discrepancies, and inconsistencies in the evidence provided in support of the instant application, this office finds that the evidence, as a whole, lacks credibility. This office finds that the applicant failed to establish that he was continuously present in the United States during the period required under Section 245A(a)(3) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal.

The record suggests an additional issue that was not addressed in the decision of denial.

In addition to being required to demonstrate his physical presence in the United States, the applicant is required, by section 245A(a)(3)(A) of the Act and the regulation at 8 C.F.R. § 245a.2(b)(1), to demonstrate that he continuously resided in the United States from November 6, 1986 until the date of filing the application, as was noted above. Given the various inconsistencies and contradictions between various items of evidence and each other, and between the evidence and the applicant's assertions, the evidence in the record does not sufficiently support that proposition. The application should have been denied on that additional basis.

A decision on appeal shall be affirmed, notwithstanding that the decision from which the appeal was taken relied upon an incorrect basis or a wrong reason. *Securities and Exchange Commission v. Chenery*, 318 U.S. 80, 88 (1943) citing with approval *Helvering v. Gowran*, 302 U.S. 238, 245. "On appeal from or review of [a] decision, the agency [rendering the appeal or review] has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. 5 U.S.C. § 557(b) *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis). This office may therefore rely on any basis of ineligibility that appears in the record, even if it was not relied upon in rendering the decision denying the application.

The petition will be denied for both of the above stated reasons, with each considered as an independent and alternative basis for denial.

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