U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEW YORK Date: MAY 30 2008

MSC 05 334 12248

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director, observing certain discrepancies between the applicant's testimony and evidence in the record, determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director 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.

On appeal, counsel for the applicant asserts that the director's decision is "full of factual errors and inconsistencies," and is not based on a review of the evidence of record. Counsel submits a brief and previously submitted evidence in support of the appeal.

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).

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 petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 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 Supplement to Citizenship and Immigration Services (CIS) on August 30, 2005. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. 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 stated that he resided at [redacted] in Brooklyn, New York from May 1981 until July 1988. At part #33 of the Form I-687, where asked to list all employment in the United States, the applicant indicated that he was employed was employed: (1) as a "helper" at Westbury Flea Market from June 1981 until April 1984; (2) as a cleaning person for LaCorde Cosmetics in Brooklyn, New York from May 1984 until April 1986; and (3) as an asbestos removal employee for Hazardous Waste Engineering Consultants in Ossing, New York from May 1986 until January 1989. The applicant indicated at Part #32 that he had one absence from the United States since his initial entry, a trip to Poland from April to May 1987.

The record also contains a Form I-687 application filed by the applicant on April 15, 1991, which contains residence and employment information consistent with that provided by the applicant on his current application. On the Form I-687 submitted in 1991, the applicant indicated that he had a child born in Poland in August 1983. The applicant's residence information indicates that he continuously resided in the United States during the requisite period; however the applicant has failed to corroborate this testimony with credible and probative evidence.

To meet his burden of proof, an applicant must provide evidence of eligibility apart from his 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 may be provided 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.

The applicant in the instant matter claims to have entered the United States in May 1981 and states that he attempted to file his legalization application in August 1987. The record of proceeding contains some contemporaneous documentary evidence from each year of the applicant's alleged residence. It is noted that the majority of the evidence was submitted in support of a prior application and therefore already in the record when the instant application was filed. The evidence includes the following:

1981

An original U.S. Postal Service Certificate of Mailing for an item mailed by the applicant from New York to Poland on July 14, 1981.

- An original receipt issued to the applicant by "Ariton" for packages mailed from the United States to Poland on December 1, 1981.

An original receipt issued to the applicant by a New York retail store on December 20, 1981.

An original letter dated September 13, 1981 from [redacted] of Saint Stanislaw Kostku School, addressed to the applicant in response to his inquiry regarding a course schedule.

1982

An original, handwritten letter dated January 12, 1991 from who stated that his office treated the applicant for a spine strain and sciatica from January 12, 1982 until September 14, 1983. [redacted] did not provide any supporting documentation to corroborate his statement that the applicant was his patient, such as medical records or evidence of payments received by the applicant for treatment.

- An invoice dated February 20, 1982 from Lorraine Furniture, Brooklyn, New York, issued to the applicant for the purchase of a coffee table.
- A letter dated June 25, 1982 from the Social Security Administration office in Trenton, New Jersey. The letter is addressed to "Motor Vehicle Agent" and advised that the applicant could not obtain a social security card due to his alien status.
- An original New York vehicle registration card issued to the applicant, bearing an expiration date of December 31, 1982.

1983

- An original New York State Insurance Identification Card issued to the applicant, showing that he had auto insurance coverage from October 20, 1983 until October 20, 1984.
- A receipt from Ariton USA, Inc. for six packages mailed from the U.S. to Poland on December 1, 1983.

- An original receipt from Zone 1 Shoes, Inc. in New York, New York, issued to the applicant on September 12, 1983.
- An original invoice for a television set purchased by the applicant on April 4, 1983.

1984

- A letter dated ostensibly dated August 8, 1984 from [redacted], P.C., which references the applicant's "Application for Legalization in the U.S.A.," and the attorney's office unwillingness to accept the applicant as a client. As there was in fact no legalization program in 1984, this evidence is lacking in credibility.
- An original prescription from a [redacted] which is issued to the applicant and dated January 3, 1984.
- An original letter dated February 22, 1984 from [redacted], advising the applicant that his test results have come in and that he should schedule an appointment to discuss the results.
- An original letter dated November 5, 1989 from [redacted] of LaCorde Cosmetics U.S.A., Inc. in Brooklyn, New York. She stated that the applicant worked for the company as a cleaning person from May 1984 until April 1986 and was hard-working and responsible. Although the statement is on company letterhead, it is not notarized. It also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The letter from [redacted] does not include the required information and cannot be verified. It can be afforded minimal weight as evidence of the applicant's residence in the United States.

1985

- An original letter dated July 11, 1985 from [redacted] of The City College of New York. The letter is addressed to the applicant in response to his request for information regarding the college's schedule for language courses.
- An original letter dated May 21, 1985 from [redacted], a New York attorney, in which he set forth his terms for representing the applicant in an accidental bodily injury claim.

1986

- An original letter dated April 12, 1986 from [redacted] of Silkmill Corp. in New York, New York. The letter is addressed to the applicant and acknowledged receipt of his job application.
- A bill of lading dated January 13, 1986, for a shipment consigned to the applicant in the United States.
- A U.S. registered mail receipt issued to the applicant for an item mailed in July 1986.

1987

- An original medical prescription dated July 12, 1987 from M.D. issued to the applicant.
- An original bank account book from the Polish & Slavic Federal Credit Union, which has transaction details dating from May 23, 1987 through September 28, 1989. As there is no opening balance reflected in the beginning of the record, it appears that this account was opened on May 23, 1987. However, the book does not identify an account number or the applicant's name and cannot clearly be associated with him.
- The applicant's original "Associate Membership Card" in the "Polish & Slavic Center," which bears an expiration date of "12/87."
- An original receipt from "Pekao Trading" for a cash transfer in the amount of $700 from the applicant to a recipient in Poland. The receipt is dated March 12, 1987. However, as discussed further below, the evidence in the record suggests that the applicant was in Poland in March 1987, thus casting doubt on the authenticity of this evidence. Pekao Trading is located in New York, New York.

Overall, the AAO finds the quality and quantity of this documentary evidence alone, particularly for the years 1985 through 1987, to be insufficient to meet the applicant's burden to establish his continuous residence by a preponderance of the evidence standard.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant submitted affidavits from two individuals who claimed to have personal knowledge of his residence in the United States:

- A notarized affidavit dated March 16, 2000 from [redacted], who stated that he is a U.S. citizen and resident of Brooklyn, New York. [redacted] indicated that he has known the applicant since 1984, has lived close to the applicant and socialized with him, and worked with the applicant at "Gutman's," where they were both carpenters in 1986 and 1987. It is noted that the applicant did not indicate on his Form I-687 that he ever worked as a carpenter or that he was ever employed by a business known as "Gutman's." As [redacted]'s statement is not consistent with the applicant's own testimony, it is lacking in credibility. Moreover, [redacted]'s statement is significantly lacking in details, such as information regarding how or when he met the applicant, that would tend to lend probative value to his claim that he had direct, personal knowledge of the applicant's residence in the United States during the requisite period.

- A notarized affidavit dated November 7, 1998 from [redacted], who stated that he is a U.S. citizen and resident of Brooklyn, New York. He stated that he has known the applicant since 1982 and that they were neighbors who had attended church services and other activities together. It is noted that on item #31 of his Form I-687, where asked to list all affiliations with churches and other organizations, the applicant indicated "none," thus the only detail provided by Mr. [redacted] regarding his interactions with the applicant appears to be inconsistent with the applicant's own testimony. The affiant did not specify exactly when, where or how he first met the applicant, indicate where he was residing when he was the applicant's neighbor, or provide any

other specifics that would tend to lend credibility to his claim that he has personal knowledge of the applicant's residence in the United States during the requisite period.

In addition, neither affiant provided a contact telephone number, thus their statements are not readily amenable to verification. Although not required to do so, it is neither affiants provided proof of their identity, or evidence that they were residing in the United States during the relevant period. Because of these affidavits are significantly lacking in detail, not entirely consistent with the applicant's own testimony, they have minimal probative value as corroborating evidence.

The applicant's administrative record also contains the following evidence:

- Copy of Form I-94 showing that the applicant was admitted to the United States in B-2 status on May 1, 1987.

- The applicant's original Polish passport (#[redacted]) which appears to have been issued in Poznan, Poland on November 20, 1981, and renewed by Polish passport authorities on December 29, 1986. The only visa in the passport is a B-2 visa issued at the U.S. Consulate in Poznan on January 15, 1987. The applicant claims that he first entered the United States in May 1981, and that he entered the United States through Canada. Absent evidence that he utilized a different passport containing a Canadian visa at that time, the passport in the record tends to support a conclusion that the applicant was in Poland in November 1981, at a time when he claims to have been residing and physically present in the United States.

- An affidavit for determination of Class Membership In League of United Latin American Citizens v. INS (LULAC) signed by the applicant under penalty of perjury on April 15, 1991. The applicant stated at that time that he last departed the United States on January 10, 1987 and returned as a B-2 visitor on May 1987. However, the applicant indicated on both Forms I-687 that he was only absent from the United States from April 1987 until May 1987. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The fact that the applicant's B-2 visa was issued in Poland on January 15, 1987 supports a finding that the information provided on the applicant's 1991 LULAC affidavit is more credible that the information provided on the applicant's Forms I-687 with respect to his dates of absence from the United States. Based on the foregoing, the applicant was absent from the United States, at a minimum, from January 10, 1987 until May 1, 1987, a period of 110 days. The applicant shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to

emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

The applicant has not been forthcoming regarding the dates of his absence from the United States and has not established that there was an "emergent" reason for his prolonged absence. He has indicated that his father died in Poland in April 1987, but this circumstance does not explain his absence from the United States during the months of January, February and March 1987. Therefore, the applicant's absence from the United States from January 1987 until May 1987, a period of more than 45 days, is clearly a break in any period of continuous residence he may have established. As the applicant has not provided any evidence that there was an "emergent reason" for his absence from the United States, he has failed to establish by a preponderance of the evidence that he 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 alone.

The applicant was interviewed under oath by a CIS officer on June 5, 2006. The applicant testified that he left the United States one time between January 1, 1982 and May 4, 1988, noting that he departed the United States in April 1987 when his father died, and returned with a visa in May 1987. The applicant was also questioned regarding his marital status and the dates and places of birth of his children. He did not submit additional evidence at the time of his interview.

On June 28, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director observed that the applicant submitted no evidence of his entry to the United States from Canada in May 1981, such as evidence of a valid entry to Canada at that time. The director further addressed the applicant's testimony that he traveled outside the United States in April 1987 and returned from Poland in May 1987 with a valid visa. The director noted that the applicant stated that his passport was confiscated by the Polish Consulate General when he renewed it. In this regard, the director stated the following:

> Your passport was confiscated at the time of your arrest in January 1991. That passport shows that it was issued in Poland on November 20, 1984.[1] Service records further reveal that you were issued a visa on January 15, 1987 in Poland and that you entered the United States [for the] first time on May 1, 1987.

[1] As noted above, the passport in question was in fact issued on November 20, 1981 with an initial validity period that expired on November 20, 1984.

In addition, the director stated "you further claim that you have resided continuously in unlawful status in [the] U.S. but you failed to submit any evidence."

The director further addressed the applicant's testimony that he has a child born in Poland in August 1983, noting that the applicant stated that his spouse has never been in the United States, Mexico or Canada. In addition, the director noted that the applicant claimed to have lived in New York since 1981, with the exception of one year of residence in Tennessee. However, the director observed that the applicant was arrested in Florida in January 1991 and, at that time, claimed to reside at an address in Fort Lauderdale.

The director advised the applicant that he had not met his burden of establishing by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite period. The applicant was afforded 30 days in which to submit additional evidence in rebuttal to the NOID and in support of his application.

Counsel for the applicant responded to the NOID with a letter dated July 12, 2006, in which he addressed each issue raised by the director. With respect to director's assertion that the applicant did not submit any documentary evidence in support of his claim, counsel emphasized that the applicant submitted "a great deal of primary, original evidence from the years 1982-1988 in support of his original CSS/LULAC application." Counsel asserted that the CIS officer who conducted the interview acknowledged that the original evidence was in the record and was even offered copies of the evidence at the time of the interview.

With respect to the applicant's passport, counsel stated that the applicant testified to the best of his recollection with respect to his previous passport, and did not recall that his passport was confiscated by authorities in 1991. Counsel asserts that the applicant "does recall applying for that passport at the Polish Consulate-General in New York in the early 1980's, possibly 1984." Counsel states that "the physical issuance of the passport in Poland and its conveyance to [the applicant] in New York is fully consistent with the communist regime's passport procedures at the time." Counsel did not address the director's observation that the applicant was issued a U.S. visa in Poland on January 15, 1987, a date on which the applicant claims to have been physically present in the United States, according to his current Form I-687.

With respect to the date of birth of the applicant's child and the issue of whether the applicant's spouse was ever in the United States, counsel asserted that the applicant "flatly stated that she was with him in the United States for the first few months in 1982, before leaving for Poland permanently."[2] Finally, counsel asserted that the applicant maintains that he never resided in Florida "and the Florida address quoted in the Notice is directly related to his 1991 arrest in Florida for a fraudulent impersonation."

The director denied the application on July 21, 2006. In denying the application, the director observed once again that the applicant had failed to submit documentary evidence of his claim of continuous residence, noting that at the time of the interview "counsel only offered to submit photocopies of

[2] The AAO notes that the CIS officer's written notes from the interview show that the applicant stated that his wife was in the United States for six months in 1982.

previously submitted documents." The director stated that all documents previously submitted pertain to the period after 1987. As discussed above, the applicant's administrative record does in fact contain original documentary evidence submitted in support of his claim of continuous residence during the requisite period, and the director's comments in this regard will be withdrawn. The director's oversight is harmless error because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

The director further determined that counsel's unsupported explanations with respect to inconsistencies in the applicant's testimony were insufficient to overcome the findings outlined in the NOID. The director acknowledged that the applicant stated that, to the best of his recollection, his spouse was with him in the United States for the first six months of 1982. The director noted that it "would have been impossible for you to have fathered the child born in August 1983 if that was true."

The director emphasized that the discrepancies between the applicant's testimony and the evidence of record required the submission of objective evidence to support the applicant's claim. The director concluded that the applicant failed to establish his eligibility for temporary residence under Section 245A of the Act.

On appeal, counsel for the applicant asserts that "the present denial serves to magnify the original problems of the Intent to Deny, which are: outright fabrication of adverse facts on the part of the Adjudicator, compensating for non-existent note-taking and an obvious desire to ignore any positive factors." As an example, counsel noted that the director gave two different accounts of what the applicant stated during his interview regarding his wife's presence in the United States. Counsel further argues that the director disregarded the explanations submitted in rebuttal to the NOID.

Upon review, the applicant has not established that he continuously resided in the United States in an unlawful status for the duration of the requisite period. However, the AAO does concur with counsel that the director's decision is lacking in analysis of the substantial documentary evidence in the record. Nevertheless, as stated above, the district director's actions must be considered to be harmless error as the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.12(f).[3]

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence

[3] The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency 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."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

pursuant to 8 C.F.R. § 245a.2(d)(3). The applicant has provided some contemporaneous evidence of residence in the United States relating to requisite period. However, questions remain regarding the credibility of the applicant's claim that he initially entered the United States through Canada in May 1981. As noted above, the applicant had a passport issued in Poland in November 1981 that does not appear to have been utilized for international travel prior to May 1987. Given this apparent discrepancy, the documentary evidence submitted to demonstrate the applicant's residence in the United States in 1981, by itself, is insufficient to establish that he entered the country prior to January 1, 1982.

While he has submitted two affidavits and letters from persons claiming to have known him during the requisite period, they are both lacking in detail and probative value, and, at times, inconsistent with the applicant's own testimony. Furthermore, neither affiant claims to have met the applicant in the United States prior to 1981. Viewed together, the affidavits and other evidence submitted are not sufficient to satisfy the applicant's burden of proof. Also, as noted by the director, the applicant has not clarified for the record the dates his spouse was actually in the United States, and whether such dates are consistent with the birth of the applicant's daughter in Poland in August 1983.

Furthermore, as discussed, the record shows that the applicant was absent from the United States for a period of 110 days or longer during the requisite period, and the applicant has not established that such absence was for an emergent reason. As such, the applicant cannot meet either the necessary continuous residency or continuous physical presence requirements for legalization pursuant to section 245A of the Act.

The absence of sufficiently detailed, consistent documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 reliance upon documents with minimal probative value and documented absence of more than 45 days, 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 she 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.

Finally, the record reflects that on January 9, 1991, the applicant was arrested by the Metro Dade Police Department in Florida and charged with using fraudulent documents to unlawfully obtain a Florida driver license, in violation of the Title XXIII, Chapter 322 of the Florida Statues, a third degree felony. The applicant has submitted a court record from the Clerk of the City and County Court of the Eleventh Judicial Circuit of Florida, which indicates that a disposition of *nolle prosequi* was entered on January 10, 1991 (Case number [redacted]. The applicant does not have a felony conviction that would render him ineligible for adjustment to temporary resident status pursuant to Section 245A(a)(4)(B) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(a)(4)(B).

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

04092008/AAOEDH01/[redacted]