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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO Date: SEP 18 2008

MSC-04-304-10029

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, San Francisco. 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. Specifically, in his Notice of Intent to Deny (NOID), the director stated that at the time of his interview with Citizenship and Immigration Services (CIS) regarding his Form I-687 application on September 13, 2005, the applicant stated that he was removed from the United States by the former Immigration and Naturalization Service (INS) in November 1982 and did not re-enter the United States until March 1983. The director stated that this absence from the United States during the requisite period exceeded 45 days and therefore, the applicant failed to meet the continuous residence requirements in the regulation at 8 C.F.R. § 245a.1(c)(1)(i). The director granted the applicant 30 days within which to submit additional evidence in support of his application. Though the director received a response to the NOID from the applicant, the response did not overcome the director's reasons for the denial of the application.

The director did not raise the issue of class membership in the current decision that is on appeal before the AAO. By considering the application on the merits, the director treated the applicant as a class member.[1]

On appeal, the applicant submits a brief through counsel. In this brief, counsel states that there is no evidence that the applicant was previously deported. Counsel asserts that if the applicant was previously deported, under the Proyecto Class settlement, he must be afforded the opportunity to challenge the prior order of removal. Counsel requests that the applicant be afforded an opportunity to challenge this order of removal.

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).

[1] The applicant is not a CSS/Newman class member, as his initial legalization application was accepted by the Service on December 7, 1987.

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.

An applicant shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

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 the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The statutory language at section 245A(b)(1)(C) of the Act provides that the alien "*must establish* that he is (i) is admissible . . and (ii) *has not been convicted* of any felony or 3 or more misdemeanors."

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

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The applicant's Department of Motor Vehicles Record is in the record. This record indicates that the applicant was arrested on December 14, 1985 for violations of California Vehicle Code §§ 40508(a) *Failure to appear,* a misdemeanor; 12500(a), *Driving without a license*; and 22350, *Speeding*; This record indicates that the applicant was convicted of one or more of these offenses on March 21, 1986.

Though the applicant's Department of Motor Vehicles Record from the 1980's is in the record, there is no court disposition associated with the arrest or subsequent conviction noted in that record. Therefore, the AAO cannot determine the number of convictions that resulted from this arrest.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing that he maintained 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 two Forms I-687 as follows:

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on July 30, 2004. At part #30 of the Form I-687 application where applicants

were asked to list all residences in the United States since first entry, the applicant indicated his addresses in the United States during the requisite period to be: [redacted] in Truckee, California from April 1980 until November 1987 and then at [redacted] in the Sierra Trailer Park in Truckee, California from November 1987 until the date he submitted his Form I-687. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that during the requisite period, he was absent during the month of February in 1982 when he went to Mexico to visit family. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that he was employed by the Northstar-at-Tahoe in Truckee, California from August 1981 until June 1985; by the Olympic Village Inn in Truckee from June 1985 until November 1987; and then by Squaw Valley Lodge in Olympic Valley, California from November 1986 until June 1990.

Also in the record are notes from the applicant's interview with a Citizenship and Immigration Services (CIS) officer regarding the Form I-687 application on September 13, 2005. The record reflects that during this interview, the applicant indicated that he first entered the United States on October 8, 1981 and that he began to reside in Kings Beach with friends for approximately five months. He stated that he worked at Hyatt in Lake Tahoe as a housekeeper and that his supervisors were [redacted] and [redacted] at that time. He went on to state that he moved from Kings Beach to Truckee in September 1982 and resided there until 1982 and that he continued to work for the Hyatt at that time. The applicant then stated that he attempted to apply for legalization during the original filing period, but he "didn't have enough papers" and therefore appealed the decision because his friend, [redacted], told the former Immigration and Naturalization Service (INS) that the applicant had paid for documents he submitted with his application. The applicant indicated that he was absent from the United States three times, two of which were during the requisite period. The applicant's first absence occurred in 1981 or 1982 when he resided in Kings Beach. He states that immigration "took him out" to Mexicali. He states that he returned from this absence in September 1981, reentering through Tijuana. The applicant states that he left the United States for the second time when his wife was pregnant and he took her to the hospital in November 1982. Though he does not provide the circumstances under which he was removed, whether he was removed with his wife, the date he was actually removed or state whether he left voluntarily or was formally removed. However, he states that immigration took him to Mexicali when he left this second time. The applicant states that he re-entered the United States in March 1983 through Tijuana. The applicant indicates that he signed papers on both occasions. It is noted that on the applicant's 1987 Form I-687, which is noted subsequently, he indicated that he only had one child who was born in 1982, [redacted] The 1987 Form I-687 and the child's birth certificate both indicate that [redacted] was born on November 19, 1982 in Guadalajara, Mexico.

The record shows that applicant also successfully submitted his first Form I-687 application during the original filing period on December 7, 1987 in Sacramento, California. At part #4 where the applicant was requested to list all names he had ever used other than his own name he stated he had used no other names. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant indicated his

addresses consistently with his subsequently filed Form I-687. At part #35 where the applicant was asked to list all of his absences from the United States, he indicated that he was absent once for two weeks in February 1982 when he went to Mexico to visit family. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that he was employed by Northstar-at-Tahoe as a janitorial supervisor from August 1981 until June 1985 and that he was presently employed by Northstar-at-Tahoe. He also indicated that he was employed by Olympic Village Inn, the Squeeze In, Squaw Valley Lodge and by Hyatt, Lake Tahoe, all in Truckee, California on various dates from 1985 until 1987. At part #40 of this application where the applicant was asked if he had ever been arrested or confined to prison, the applicant indicated that he was "picked up" in 1981 when he was coming home from work. He stated that he spent 2 days in jail and was then sent to Mexico. He did not indicate whether he was deported or otherwise removed or if his return to Mexico was voluntary.

The record also contains a sworn statement taken from the applicant on January 7, 1988. In this statement, the applicant asserts that though he submitted a letter in support of his original 1987 legalization application that was allegedly from [redacted] President of Northstar-at-Tahoe, he does not know who [redacted] is. He states that he **received** this letter from a friend named friend [redacted] after he told [redacted] that he needed an employment letter. He states that he did not pay for this letter and that he met when he was getting his mail.

That the applicant has previously submitted a sworn statement asserting that he submitted a fraudulent document casts doubt on evidence submitted by the applicant. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions

or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The documents in the record that are relevant to establishing whether the applicant resided continuously in the United States for the duration of the requisite period include the following documents, submitted both in 1987 with the applicant's original Form I-687, in 1992 when he appealed the denial of that application and in 2004 with his subsequently filed application:

Documents submitted prior to the denial of the applicant's original Form I-687 on January 8, 1988 include the following:

1. An employment affidavit signed b who indicates he is the President of the Northstar-at-Tahoe. This affidavit is dated October 15, 1987. The affiant states that the applicant was employed by the Northstar-at-Tahoe from August 23, 1981 until June 15, 1985 and asserts that he currently works as a Janitorial Supervisor. It is noted that the applicant submitted a sworn, signed statement on January 7, 1988 on which he stated that he did not know the affiant and that he was given this letter by an acquaintance, [redacted], after he told [redacted] that he needed an employment letter to submit with his Form I-687 application. Because the applicant has submitted a sworn statement informing CIS that this document is fraudulent, no weight can be given to this document as evidence of the applicant's residence in the United States. Further, because the applicant has admitted to submitting a fraudulent document in support of his application, doubt is cast on the credibility of other documents submitted by the applicant.

2. An affidavit from [redacted] that was notarized on November 3, 1987. The affiant states that he has known the applicant for seven years.

3. An affidavit from [redacted] that was notarized on September 29, 1987. The affiant states that she knows that the applicant resided in Truckee, California from 1980 until the date she submitted her affidavit. She states that she has seen the applicant at Mexican functions. She states that the applicant is a client at her office. She states that the longest period of time that she has not seen the applicant for is a few weeks. However, the affiant does not state where she first met the applicant or whether she first met him in the United States. She further fails to state the frequency with which she saw the applicant during the requisite period.

4. An affidavit from [redacted] that was notarized on September 10, 1987. The affiant states that he has known the applicant since 1980. The affiant states that he and the applicant worked at the "Col Neva Lodge" when he first met the applicant. It is noted that the applicant did not indicate that he was employed by that lodge on either of his

Forms I-687. The affiant goes on to state that the applicant more recently worked with him at the Olympic Village Inn.

5. An affidavit from [redacted] that was notarized on November 3, 1987. [redacted] states that the applicant has resided at her house since April 20, 1981. The affiant indicates that she resided on [redacted] in Truckee, California.

6. A photocopy of the applicant's medical records from the Truckee Tahoe Medical Group in Truckee, California. These records indicate that the applicant received medical care on April 22, 1986, January 21, 1987 and on July 1, 1987.

7. An employment declaration from the Olympic Village Inn at Squaw Valley that is signed by [redacted], a Personnel Administrator and is dated September 14, 1987. The declarant states that the applicant was employed by the Olympic Village Inn from June 22, 1985 until September 7, 1986 as a janitor and then from April 10, 1987 to June 7, 1987 as a dishwasher. It is noted that on the applicant's Form I-687 submitted in 2004, he indicated that he was employed by the Olympic Village Inn from June 1985 until November 1987.

8. An employment affidavit that is signed by This affidavit was notarized on October 8, 1987. The affiant states that the applicant has worked part time as a dishwasher at the Squeeze In beginning in October 1987.

9. A photocopy of a Social Security Card issued to the applicant.

10. An employment declaration issued by Squaw Valley Lodge. This declaration is signed by [redacted], who indicates that she is the Executive Housekeeper. The declaration and is dated August 31, 1987. The declarant states that the applicant was employed as a seasonal full time groundskeeper from June 10, 1987 and continued to be employed when [redacted] signed the declaration. The letter further states that the applicant was previously employed from November 20, 1986 until April 12, 1987.

11. An affidavit from [redacted] that is dated October 10, 1987 and was notarized on October 13, 1987. The affiant states that he has known the applicant since 1981. He speaks of the applicant's work ethic and moral character.

12. Original Forms W-2 issued to the applicant during the requisite period as follows:

    - A Form W-2 issued to the applicant in 1985 by The Village at Squaw Valley.
    - A Form W-2 issued to the applicant in 1985 by the Hyatt Tahoe Inc.
    - A Form W-2 issued to the applicant in 1985 by Squeeze In.
    - A Form W-2 issued to the applicant in 1986 by Village Resorts Inc.

The director of the San Francisco District Office of the former INS denied the applicant's first application on January 8, 1988. In doing so, the director noted the Immigration and Nationality Act (Act) § 245A, which states in pertinent part that evidence to support an applicant's eligibility for legalization shall include documents establishing proof of identity, proof of residence, and proof of financial responsibility. All documentation submitted will be subject to Service verification. Applications submitted with unverified documentation may be denied. The director also noted the regulation at 8 C.F.R. § 245a.1(d)(6), which at the time of the adjudication of this application, defined evidence and stated in pertinent part that the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. The director stated that the applicant failed to satisfy his burden of proving that he resided continuously in the United States for the requisite period. The director further noted that the applicant did not submit sufficient evidence to prove that he met the financial requirements necessary to be eligible to adjust status.

The director informed the applicant that he could appeal this decision by submitting an appeal to the Administrative Appeals Unit.

The record contains two appeals submitted subsequent to the director's January 8, 1988 decision and prior to his submission of his second Form I-687 in 2004.

The first Form I-694 Notice of Appeal of Decision was signed by the applicant on February 7, 1988 and was received by the California Service Center on December 14, 1990. A notation on this form indicates that the form is not an appeal. However, on this form the applicant states he worked at the Northstar-at-Tahoe from 1980 until he quit. He does not indicate when he quit. He states that he asked for a letter from the Northstar-at-Tahoe to verify this employment and that at that time a letter was completed for the applicant using his actual name. He states that he actually used an assumed name during his time working for Northstar-at-Tahoe. He claims that he previously also worked at Le Petit Pier restaurant under another assumed name beginning in November 1980.

The second Form I-694 in the record was signed by the applicant on April 7, 1992. On this Form I-694, the applicant reiterates that he previously worked at the Northstar-at-Tahoe from 1980 until he quit. He states that there was confusion caused when he submitted his original employment letter from Northstar-at-Tahoe because he previously worked for this company using both an assumed and his actual name. The applicant goes on to say that he is enclosing a photocopy of his Identification Card that contains a photograph that he alleges is his photograph and the name [redacted]. He states he is also enclosing a letter from La Petit Pier restaurant. He states that he worked at this restaurant beginning November 1980 under an assumed name.

With these appeals, the applicant has submitted additional documentation.

Additional documents submitted subsequent on appeal to the original decision dated January 8, 1988:

1. A declaration from [redacted], who indicates he is the owner of Le Petit Pier Restaurant that is dated February 4, 1988. The declarant states that [redacted] worked for the restaurant from June 1980 until June 1982. It is noted that the applicant stated on his 1987 Form I-687 that he had never used any names other than his own. It is also noted that the applicant did not indicate that he had ever worked for this restaurant on his Form I-687. This employer did not indicate whether there were periods of unemployment or layoff during the applicant's time as his employee. Because this employment declaration is not consistent with the applicant's Forms I-687 regarding his employment, doubt is cast on this document as evidence of the applicant's employment during the requisite period.

2. A declaration from who states she is a Personnel Representative from the Northstar-at-Tahoe. This letter is dated January 28, 1988. The declarant states that [redacted] worked from January 27, 1985 until April 7, 1985 as a dishwasher. With this document, the applicant has submitted a photocopy of an Employee Identification card issued by the Northstar-at-Tahoe showing the name [redacted] and a photograph, allegedly of the applicant. This identification card is for the 1984-1985 season.

3. The applicant's Department of Motor Vehicles Record. This record indicates that the applicant was arrested on December 14, 1985 for violations of California Vehicle Code §§ 40508(a) *Failure to appear,* a misdemeanor; 12500(a), *Driving without a license*; and 22350, *Speeding*; This record indicates that the applicant was convicted of one or more of these offenses on March 21, 1986. This record also indicates that the applicant first received a California Identification Card on April 18, 1985 and first received a Driver's License on December 20, 1985.

4. A photocopy of a California Driver's License issued to the applicant on December 16, 1985. It is noted that the translation of applicant's birth certificate indicates that his date of birth is January 26, 1957 but this Driver's License indicates that his date of birth is February 11, 1957. After reviewing both the original Spanish version of the applicant's birth certificate and its translation, the AAO determined that the applicant's birth certificate states that the applicant's date of birth is January 26, 1957 and that this birth was registered on February 11, 1957.

On October 26, 1993, the Legalization Appeals Unit (LAU) of the California Service Center denied the applicant's appeal of his Form I-687 application decision. In its decision, the LAU noted that the applicant submitted a sworn statement in which he indicated that the employment letter from Northstar-at-Tahoe was false. Though the LAU noted the additional evidence submitted by the applicant in support of his application, it stated that serious concerns regarding

the applicant's credibility were raised when he admitted to having provided false information or fraudulent documentation with his application. The LAU dismissed the application.

Though the record reflects that the applicant successfully submitted his application, that the application was adjudicated and that he appealed that decision, the director did not deny the applicant's claim of class membership after he submitted his Form I-687 pursuant to the CSS/Newman Settlement Agreements. The director considered both the previously noted documents and the additional documents submitted with the applicant's 2004 Form I-687.

Those documents resubmitted with the applicant's 2004 Form I-687 have been previously noted. Additional documents that are relevant to his residence in the United States during the requisite period were submitted with the applicant's Form I-687 in 2004 and include the following:

- Pay stubs from OVA Hospitality Services and Squaw Valley Hotel issued to the applicant on July 6, 1985; July 20, 1985; August 3, 1985; September 14, 1985; September 28, 1985; October 12, 1985; October 26, 1985; October 31, 1985; November 23, 1985; December 7, 1985; December 31, 1985; January 4, 1986; January 18, 1986; February 1, 1986; February 16, 1986; March 15, 1986; March 29, 1986; April 12, 1986; April 26, 1986; May 10, 1986; May 24, 1986; June 7, 1986; July 5, 1986; July 7, 1986; August 2, 1986; August 16, 1986; August 30, 1986; September 13, 1986; October 31, 1986; May 23, 1987; and January 2, 1988.

Though it is noted that the applicant also submitted proof of his residence in the United States subsequent to the requisite period with this second Form I-687, the matter in this proceeding is whether the applicant has submitted sufficient evidence to prove his residence during the requisite period. Evidence that proves his residence in the United States subsequent that that period is not relevant to this proceeding. Therefore, the additional evidence submitted with this Form I-687 that is not relevant to this proceeding is not discussed here.

The director issued a Notice of Intent to Deny (NOID) the application on February 1, 2007. In his NOID, the director stated that the applicant testified on September 13, 2005 before an immigration officer that he was removed from the United States by the former INS in November of 1982. The director went on to say that the applicant testified that he reentered the United States in March 1983. The director found that this indicated that the applicant had a single absence from the United States during the requisite period that exceeded 45 days and that, therefore, the applicant did not maintain continuous residence in the United States during the requisite period pursuant to the regulation at 8 C.F.R. § 245a.1(c)(1)(i). The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to the NOID, the applicant submitted a brief though his counsel. In this brief, dated February 28, 2007, counsel notes that the regulations specify that if an absence from the United States is for more than 45 day days, the Service must determine if an applicant's return was delayed by an emergent circumstance. Counsel asserts that in this case, such emergent

circumstances existed. Counsel states that he will provide CIS with proof that these circumstances existed in another document. However, the record reflects that counsel did not submit additional documents subsequent to submitting the brief. Counsel further argues that the regulation at 8 C.F.R. § 245a.1(c)(1)(i) is not found in the statute.

The director denied the application on August 16, 2007. In his decision, the director noted the applicant's response to his NOID. However, the director found that the applicant continued to fail to establish that he continuously resided in the United States for the duration of the requisite period.

On appeal, counsel for the applicant submits a brief in which he states that no evidence exists that the applicant was deported. He states that the applicant should be included in the Proyecto Class. Counsel states that the applicant may have voluntarily departed, but argues that this does not indicate that the applicant was the subject of an Order of Deportation. Counsel asserts that the applicant must be afforded the opportunity to challenge his prior order of removal. Though Counsel asserts that there is no evidence of a prior order of deportation, Counsel goes on to state that the Proyecto Class settlement requires that the applicant be afforded the opportunity to challenge the order of deportation.

The AAO has reviewed the evidence in the record and has found that the applicant has not been consistent when he has represented the dates and details associated with his absences from the United States during the requisite period. In 1987 when he submitted his original Form I-687, he stated that he was only absent from the United States once, when he went to Mexico for two weeks in 1982. However, he has stated in a subsequent interview with CIS in 2005 that he left the United States at some point after November 1982 when his wife was pregnant. The record is not clear as to when the applicant asserts he left, whether the applicant was formally removed or whether the applicant voluntarily departed at that time. The only evidence of this departure during the requisite period in the applicant's current record appears to be the statement made by the applicant before an immigration officer on September 13, 2005. Therefore, CIS is not able to provide the applicant with an order of deportation associated with this departure. As was noted, the record is not clear regarding the dates associated with this absence. However, it is clear that neither of the applicant's Forms I-687 indicate that the applicant had any absences from the United States during the requisite other than an absence in February 1982. Therefore, this absence that occurred after November of 1982 is not consistent with what the applicant indicated on his Forms I-687.

Documents in the record are also not consistent regarding the applicant's employment in the United States. Though the applicant admitted in January 7, 1988 sworn statement that he submitted a fraudulent letter that indicated that he worked for Northstar-at-Tahoe from August 1981 until June 1985, when he submitted his Form I-687 in 2004 the applicant continued to claim that he worked for that establishment during those same dates. In 1992 when the applicant appealed the denial of his original application, he attempted to explain the submission of the fraudulent document by stating that he worked using an assumed name, [redacted]

However, the applicant's original Form I-687 did not indicate that he had ever used that or any other name as his own. It was not clear how his working under this assumed name resulted in an acquaintance providing him with a fabricated document. Also with his 1992 appeal, the applicant has submitted an employment letter from "La Petit Pier" restaurant that indicates that [redacted] worked there. It is noted that the applicant did not indicated that he ever worked at this restaurant on either of his Forms I-687. It is further noted that applicant's Form I-687 submitted in 1987 does not indicate that he has previously ever used the name [redacted]

Further, the applicant has previously completed a sworn signed statement in which he admitted that he submitted a fraudulent document to the former INS regarding his employment in the United States during the requisite period. He has also made a false statement to CIS when he submitted his CSS/Newman Class Membership Worksheet. Part #1 of this Worksheet asks the applicant if he was turned away when he originally attempted to apply for legalization during the original filing period. At this part, the applicant indicated that he had been turned away when he attempted to do so. However, the record reflects that the applicant actually successfully submitted his application and that it was denied.

The applicant has not been consistent when representing his employment in the United States during the requisite period. He has also not been consistent regarding his absences from the United States during that time. He has submitted a document that he later stated was not genuine. The absence of credible supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period casts grave doubt on the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's contradictory statements on his applications and his reliance upon documents with minimal or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--, supra*. The applicant is, therefore, ineligible for Temporary Resident Status under section 245A of the Act on this basis.

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