



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC-06-073-13813

Office: NEW YORK

Date: APR 28 2008

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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, the applicant asserts that he has continuously resided in the United States for the requisite period. The applicant also addresses the deficiencies in his evidence.

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 December 12, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in Sunny Side [sic], New York from September 1981 until December 1991. At part #33, he showed his first employment in the United States to be for Nupur Indian Restaurant in New York, New York from November 1981 until April 1985. The applicant showed that he was subsequently employed with Lal Bagh – Cusine [sic] of India from May 1986 until 1992.

The applicant submitted the following documents in support of his application:

- The applicant’s own affidavit, dated November 27, 2005, which attests to his eligibility for temporary resident status pursuant to the CSS/Newman Settlement Agreements. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. Therefore, this letter alone is not evidence of the applicant’s residence in the United States during the requisite period.

- An affidavit from [REDACTED], dated December 5, 2005, which in part provides, “[the applicant] arrived in the USA on September 1981 as an EWI. Since then he lived one [sic] of his friends house by sharing a room until 09/1987 and then he moved to a different location. Now in [sic] these days we meet each other very occasionally in the parties, community social gatherings, public meetings and work place.” This affidavit is contains several apparent deficiencies. First, the affidavit does not describe Mr. [REDACTED] first acquaintance with the applicant. Relevant information would include how and where [REDACTED] first met the applicant. Second, this affidavit fails to describe [REDACTED] contact with the applicant in the United States during the requisite period. Relevant information would include the type and frequency of contact [REDACTED] had with the applicant during the requisite period. [REDACTED]’s assertion that he now sees the applicant at parties, community social gatherings, public meetings and the work place fails to specify the type of contact he had with the applicant during requisite period. Third, this affidavit does not provide any specific information on the location of the applicant’s residence during the requisite period. Finally, Mr. [REDACTED]’s assertion that the applicant moved in September 1987 is inconsistent with the applicant’s Form I-687 application, which provides that he resided at the same address from September 1981 until December 1991. Given these deficiencies and inconsistency, this letter has no probative value and credibility as evidence of the applicant’s residence in the United States since September 1981.
- An affidavit from [REDACTED] dated December 5, 2005, which provides that he personally knows that the applicant came to the United States in September 1981. This affidavit is not reliable evidence of the applicant’s residence in the United States during the requisite period. The affidavit provides that [REDACTED] has resided in the United States since July 1994. Additionally, the affidavit provides that [REDACTED] first met the applicant in the United States in October 1994. Therefore, [REDACTED] would not have direct personal knowledge of the applicant’s continuous residence in the United States since September 1981. Given this inconsistency, this affidavit has no probative value and credibility as evidence of the applicant’s residence in the United States since September 1981.
- An affidavit from [REDACTED], dated November 27, 2005, which is identical to the aforementioned affidavit. This affidavit provides that [REDACTED] personally knows that the applicant came to the United States in September 1981. This affidavit is also not reliable evidence of the applicant’s residence in the United States during the requisite period. This affidavit provides that [REDACTED] has resided in the United States since December 1992. Additionally, the affidavit provides that [REDACTED] first met the applicant in the United States in February 1993. Therefore, [REDACTED] would not have direct personal knowledge of the applicant’s continuous residence in the United States since September 1981. Given this inconsistency, this affidavit has no probative value and credibility as evidence of the applicant’s residence in the United States since September 1981.

- A copy of an affidavit from [REDACTED] dated November 27, 2005. This affidavit provides that [REDACTED] personally knows that the applicant came to the United States in September 1981. The affidavit provides that [REDACTED] first met the applicant in the United States in November 1981. Therefore, [REDACTED] would not have direct personal knowledge of the applicant's continuous residence in the United States since September 1981. Furthermore, this affidavit contains several apparent deficiencies. First, this affidavit fails to explain [REDACTED]'s first acquaintance with the applicant. Second, this affidavit fails to provide any information regarding [REDACTED]'s contact with the applicant during the requisite period. The only information this affidavit provides is, "I first met him the USA in Nov. 81. Since I met him, I found him honest, sincere and very amiable person." This affidavit does not provide any relevant information that would serve to establish [REDACTED]'s direct personal knowledge of the applicant's residence in the United States during the requisite period. Given these deficiencies and inconsistency, this affidavit is has no probative value and credibility as evidence of the applicant's residence in the United States since September 1981.
- A copy of a letter from [REDACTED], General Secretary, Bangladesh Society Inc., New York, dated July 30, 2005. The letter provides, "[t]he undersigned has been pleased to confirm that [REDACTED] of [REDACTED] Woodside, NY 11377 is personally known to me. He is an active member of this Bangladesh Society Inc., New York since 1983." The regulations at 8 C.F.R. § 245a.2(d)(3)(v) provide that attestations by churches, unions or other organizations should state the address where the applicant resided during the membership period; establish how the author knows the applicant; and establish the origin of the information being attested to. This letter fails to follow these delineated guidelines. [REDACTED] has not provided the applicant's address during the membership period. Additionally, [REDACTED] has not indicated his direct personal knowledge of the applicant's membership during the requisite period. Lastly, [REDACTED] has not established the source of information being attested to. Since this letter does not follow the delineated guidelines, this letter is of minimal probative value as evidence of the applicant's continuous residence in the United States since 1983.
- A copy of a letter from Lal Bagh Cusine [sic] of India notarized on July 29, 1992. This author of this letter, [REDACTED], does not indicate the title of his position with this restaurant. This letter provides, "[REDACTED] of [REDACTED], Jamaica, NY 11432 has been working as a part time Dishwasher in our Restaurant since May 1986. His salary starting from \$110.00 up to ending his Gross salary is \$175.00." The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide, in part, that letters from employers should include: the applicant's address at the time of employment; whether or not the information was taken from official company records; and where the records are located and whether Citizenship and Immigration Services may have access to the records. This letter fails to meet these delineated guidelines. The letter does not provide the

applicant's address during the period of employment. Additionally, this letter fails to explain the source of the applicant's employment information, i.e. whether the information was taken from official company records. Finally, this letter is of questionable credibility because the word "cuisine" is misspelled as "cusine" on the restaurant's letterhead. Given these deficiencies, this letter is of no probative value and credibility as evidence of the applicant's residence in the United States since May 1986.

- A copy of an envelope from Bangladesh with an illegible postmark. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. 8 C.F.R. § 245a.2(d)(6). Had the applicant submitted the original envelope, this document could have been assessed for its probative value and credibility. Since the postmark is illegible, this document is of no probative value as evidence of the applicant's residence in the United States during the requisite period.
- A copy of a notarized letter from [REDACTED], D.D.S., dated July 27, 1992.<sup>1</sup> This letter provides, "I know [REDACTED] since he came to this country U.S.A. in 1980. He became my patient in [REDACTED] Brooklyn, N.Y. 11212 (718) 498-7677 on 02.03.1983. Still I have my office in [REDACTED], Brooklyn, NY 11212. He is a hardworking, trustworthy, mild tempered gentleman. I wish him ever success in life." This letter is inconsistent with the applicant's Form I-687 application, which states that the applicant first resided in the United States in September 1981. Additionally, this letter offers no other pertinent information regarding the applicant's residence in the United States during the requisite period. It is reasonable to expect Dr. Maniky to provide this information since he claims that he has known the applicant since 1980 and the applicant has been his patient since February 3, 1983. Since this letter does not contain any relevant information it has no probative value as evidence of the applicant's residence in the United States during the requisite period.
- A copy of a letter from [REDACTED], Office Manager, The Language Lab, notarized July 29, 1992. This letter provides:

This is to confirm that [REDACTED], a student of our Language Lab since August 1982 to September 1983. During this period he took several English courses but did not complete the course successfully as he was irregular in his class attendance. Finally, [REDACTED] tried to make up for the missed classes but unfortunately he could not make up for the losses. As a result he failed in the Language Lab class even though he attended classes till September, 1983.

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<sup>1</sup> Although this letter is dated July 27, 1992, it was notarized on July 29, 1992.

The letter from [REDACTED] is notarized on July 29, 1992, nearly ten years after the applicant purportedly took classes at the Language Lab. The letter fails to explain Ms. [REDACTED] source of information regarding the applicant's attendance at this school. Given this deficiency, this letter is of minimal probative value and reliability as evidence of the applicant's continuous residence in the United States from August 1982 until September 1993.

- A copy of a notarized letter from [REDACTED] General Secretary, Islamic Council of America, Inc., dated July 29, 1992. This letter provides, "[t]his is to certify that Mr. [REDACTED] whom we know since 1981. He comes to our religious Mosque at 11<sup>th</sup> St. Manhattan, Modina Masjid every Friday." As previously noted, the regulations at 8 C.F.R. § 245a.2(d)(3)(v) provide that attestations by churches, unions or other organizations should state the address where the applicant resided during the membership period; establish how the author knows the applicant; and establish the origin of the information being attested to. This letter fails to conform to the delineated guidelines. [REDACTED] has not provided the applicant's address during the membership period. Additionally, [REDACTED] has not indicated his direct personal knowledge of the applicant's membership during the requisite period. Finally, [REDACTED] has not established the source of information being attested to. Since this letter does not follow the delineated guidelines, this letter is of minimal probative value as evidence of the applicant's continuous residence in the United States since 1981.
- Copies of identical fill-in-the-blank form affidavits from [REDACTED] and [REDACTED], dated July 29, 1992. These affidavits in part provide that the affiants have personal knowledge of the applicant's residence at [REDACTED] Sunny Side [sic], New York from September 1981 until December 1991. However, they fail to provide any information as to how the affiants are able to determine the date of the beginning of their acquaintance with the applicant in the United States. The form requests the affiant to provide how "he is able to determine the date of the beginning of his/her acquaintance with the applicant in the United States." In response to this question, both affiants responded, "friend." Consequently, these affidavits fail to establish the affiants' direct personal knowledge of the applicant's residence in the United States during the requisite period. Therefore, they are of no probative value as evidence of the applicant's continuous residence in the United States during the requisite period.
- Copies of the applicant's Form I-687 application and corresponding worksheet questionnaire, dated July 30, 1992, filed for a determination of his class membership in *CSS v. Thornburgh* (Meese). Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. Therefore, these documents alone are not evidence of the applicant's continuous residence in the United States during the requisite period.

On May 8, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the applicant submitted affidavits that are neither credible nor amenable to verification. The director found that there is no proof that the affiants have direct personal knowledge of the events and circumstances of the applicant's residency. The director determined that the applicant failed to submit credible documents that meet his burden of proof by a preponderance of the evidence as to his residence in the United States during the requisite period.

In response to the NOID, the applicant submitted a rebuttal and he furnished additional documentation. In his rebuttal, the applicant asserts that the affiants are willing and able to confirm their statements. The applicant states that he has made a prima facie case for eligibility. The applicant states that he has established his continuous residence and physical presence in the United States for the requisite periods.

The applicant submitted the following documents in response to the NOID:

- A copy of an affidavit, dated May 26, 2006, from [REDACTED]. This affidavit provides that he has known the applicant since October 1981 when they met at the applicant's home in Sunnyside, New York. This affidavit contains several apparent deficiencies. The affidavit does not describe [REDACTED]'s first acquaintance with the applicant. Additionally, this affidavit fails to provide any information on [REDACTED]'s contact with the applicant in the United States during the requisite period. Relevant information would include the type and frequency of contact [REDACTED] had with the applicant during the requisite period. Given these deficiencies, this letter has no probative value as evidence of the applicant's residence in the United States since October 1981.
- A copy of a nearly identical affidavit, dated May 24, 2006, from [REDACTED]. This affidavit provides that he has known the applicant since December 1981 when they met at the Madina Masjid in New York. This affidavit fails to provide any relevant information on [REDACTED]'s contact with the applicant in the United States during the requisite period. Relevant information would include the type and frequency of contact [REDACTED] had with the applicant during the requisite period. This information is necessary to establish Mr. [REDACTED]'s direct personal knowledge of the applicant's residence in the United States during the requisite period. Given this deficiency, this letter has no probative value as evidence of the applicant's residence in the United States since December 1981.
- A copy of another nearly identical affidavit from [REDACTED], dated May 25, 2006. This affidavit provides that he has known the applicant since October 1981. The affidavit provides that they met when the applicant was looking for a job at the 5<sup>th</sup> Avenue Diner in Brooklyn, New York. This affidavit also fails to provide any relevant information on [REDACTED]'s contact with the applicant in the United States during the requisite period. Relevant information would include the type and frequency of contact [REDACTED] had with the applicant during the requisite period. This information is necessary to establish

█'s direct personal knowledge of the applicant's residence in the United States during the requisite period. Given this deficiency, this letter has no probative value in establishing the applicant's residence in the United States since December 1981.

- A copy of a letter from █, former Imam of the Madina Masjid. This letter provides, "[w]hen I was the Imam of Madina Masjid from 1982 – 1986, I used to see █ of █ Woodside, NY 11377 coming to the Masjid during the Friday prayers and other Islamic holidays." The regulations at 8 C.F.R. § 245a.2(d)(3)(v) provide that attestations by churches, unions or other organizations, should show the applicant's inclusive dates of membership. The letter from █ fails to satisfy this delineated guideline. The letter also fails to provide detailed information on the applicant's level of involvement and participation at the Madina Masjid during the requisite period. Relevant details would include how frequently the applicant attended the Madina Masjid. Furthermore, the applicant has neglected to list his association with the Madina Masjid on his Form I-687 application. Given these deficiencies, this letter is of no probative value as evidence of the applicant's residence in the United States from 1982 until 1986.
- A copy of a letter from █ M.D., dated November 26, 1986. This letter provides, "[t]his is to certify that █ Dob 3-1-62 of █ Sunnyside, NY 11104 was under my treatment since March 10, 1982 to June 25, 1982. During the period he was suffering from Viral Fever. The last time he was examined by me on December 15, 1982 and he was found well for the normal duties of life." The letter from █ is dated November 26, 1986 and it refers to treatment given to the applicant from March 10, 1982 until December 15, 1982. This letter fails to explain the source of █ recollection of treating the applicant for viral fever. █ letter would have carried more weight had he included this information or submitted copies of the applicant's medical records. Therefore, this letter is of minimal probative value as evidence of the applicant's residence in the United States from March 10, 1982 until December 15, 1982.
- Copies of three postmarked envelopes. The first envelope contains a postmark from New York. The date on this postmark is illegible except for the year 1987. It is addressed to the applicant at █ Jamaica, NY 11432. This address is inconsistent with the applicant's Form I-687 application, which provides that in 1987 he was residing at █, Sunny Side, New York. Therefore, this envelope is of no probative value and credibility as evidence of the applicant's residence in the United States in 1987. The second and third envelopes contain completely illegible postmarks. As previously stated, in judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. 8 C.F.R. § 245a.2(d)(6). Had the applicant submitted original envelopes, these documents could have been assessed for their probative value and credibility. Since the postmarks are illegible, these two envelopes are of no probative

value as evidence of the applicant's residence in the United States during the requisite period.

- The applicant submitted an invoice from [REDACTED] dated February 23, 1982. The invoice address is H.D. Furniture Electronic, Inc., 136-58 39<sup>th</sup> Avenue, Flushing (Queens), New York, 11354, and telephone numbers are (718) 939-5656/5404/5022 and (718) 461-0733/0760. This document is suspect since the area code 718 was not in existence until 1985. A Bell Atlantic Press Release on the issuance of the 347 area code provides, in part, "[t]he 212 area code was introduced in 1945 and served all of New York City for 40 years. The 718 area code was introduced in 1985, replacing the 212 area code in Brooklyn, Queens and Staten Island" (emphasis added).<sup>2</sup> Therefore, this document is of no probative value and credibility as evidence of the applicant's residence in the United States since February 23, 1982.

On September 20, 2006, the director issued a notice of denial. In denying the application the director found that the evidence the applicant submitted is insufficient to overcome the grounds for denial. The director found that the additional affidavits are not credible. The director noted that the statement from [REDACTED] appears to have been altered and the Office of Professions could not locate a license for him. The director also noted that the receipt from [REDACTED] appears to have been altered and in 1982 the area code for Flushing, New York was 212. The director determined that the applicant failed to submit credible documents that meet his burden of proof by a preponderance of the evidence as to his residence in the United States during the requisite period.

On appeal, the applicant asserts that he has continuously resided in the United States during the requisite period. The applicant states that he was a "paying boarder" who did not have any utility bills under his name. The applicant states that he was involved in the Bangladesh Society Inc., New York, but does not possess any records of dues. The applicant states that he did not visit a hospital during his illness because of his illegal status. The applicant states that he used a commercial typist to type the affidavits and the affiants are willing to confirm their statements. The applicant states that the statements from [REDACTED] and [REDACTED] appear to be altered because they are copies from very old copies. The applicant states that he learned from his friends that [REDACTED]'s license was "surrendered" sometime after the statutory period. Finally, the applicant states that he has clearly established his eligibility for temporary resident status. The applicant resubmits copies of the following documents: affidavits from [REDACTED] and [REDACTED] letters from [REDACTED] and [REDACTED] M.D.; and the applicant's rebuttal to the NOID.

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The applicant has failed to provide

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<sup>2</sup> <http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/09-13-1999/0001020163&EDATE=>

probative and credible evidence of his residence in the United States during the requisite period. The applicant submitted numerous documents, which as noted, are either inconsistent, altered, or lack considerable detail. As discussed above, these documents have either no probative value or minimal probative value as evidence of the applicant's continuous residence in the United States during the requisite period. When viewing these documents either individually or within the totality, they do not establish that the applicant's claim is probably true. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of documentary evidence. *See* 8 C.F.R. § 245a.2(d)(3). On appeal, the applicant failed to submit any additional corroborating documentation. The applicant's own assertions regarding his evidence do not satisfy his burden of proof. *See* 8 C.F.R. § 245a.2(d)(6). The applicant's failure to provide sufficient documentary evidence to establish his continuous residence in the United States during the requisite period renders a finding that he has failed to satisfy his burden of proof in this proceeding. *See* 8 C.F.R. § 245a.2(d)(5).

In conclusion, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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