

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

LI

FILE: [REDACTED]
MSC-06-031-12207

Office: MIAMI (JACKSONVILLE) Date: **AUG 25 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:

[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, Miami. 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 evidence the applicant submitted in support of his application did not allow him to establish 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. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that he is appealing the director's decision because the director did not accord due weight to the evidence he submitted in support of his application.

An applicant for Temporary Resident Status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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

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

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

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

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on October 31, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant indicated his addresses in the United States during the requisite period to be [REDACTED] in Arecibo, Puerto Rico from November 1981 until August 1984; and [REDACTED] in Bronx, New York from August 1984 until May 1990. At part #31 where the applicant was asked to list all churches, unions, businesses and organizations of which he was a member, he indicated that he had been a member of the South Florida Hindu Temple from June 1990 and that he continued to be a member at the time 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 stated that he had he had one absence during the requisite period when he went to Trinidad and Tobago to visit family from May to June in 1984. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he did not indicate that he was employed during the requisite period.

The record also contains a Form I-687 application submitted in August 1990 to establish class membership. The applicant indicated both his addresses of residence during the requisite period and his absences from the United States during the requisite period consistently with what he stated on his subsequently filed Form I-687. At part #34 where the applicant was asked to list all of the associations with clubs, organizations, businesses and churches, he indicated that he had no such associations. At part #36 where the applicant was asked to list all of his employment since he first entered the United States, he indicated that he was a self-employed painter for the duration of the requisite period. With this Form I-687, the applicant also submitted an affidavit for determination of class membership on which he stated that he first entered the United States without inspection by car. He stated that he first entered Buffalo, New York through the Canadian border at that time.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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

- An affidavit from [REDACTED] that was notarized on March 8, 2004 in Fort Lauderdale, Florida. The affiant asserts that she has known the applicant since December 1981 when she first met him in Arecibo, Puerto Rico at a Christmas celebration. She states that she paid the applicant to paint her mother's house in December 1981 and that she employed the applicant doing odd jobs from 1982 to 1984. She states that she personally knows that the applicant resided in Arecibo, Puerto Rico from November 1981 until August 1984 and that the applicant flew to New York from Puerto Rico in August 1984. She states that she continued to contact the applicant while he resided in New York from August 1984 until April 1990. She states that the applicant did not leave the United States until April 1990 when he went to Trinidad to visit his family. She then states that the applicant attempted to apply for legalization in 1987 but was denied because he left the United States in 1984 and reentered legally. Though this affiant states that she knows that the applicant resided in Puerto Rico from 1981 to 1984, she does not state the frequency with which she saw him during that time. She does not indicate whether there were periods of time during the requisite period when she did not see the applicant. She further

states that the applicant left the United States in 1984 but also states that he did not leave the United States until 1990. As both of these statements cannot be true, doubt is cast on assertions made by this affiant regarding the applicant's absences from the United States during the requisite period. Because this affidavit is significantly lacking in detail, and because it is internally inconsistent regarding the applicant's absences from the United States during the requisite period, very minimal weight can be accorded to this affidavit as evidence that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] that was notarized on an unspecified date in Florida. Though the affidavit was notarized in Florida, the affiant states that she resides in Trinidad. The affiant states that she is the applicant's sister. She further states that in November 1981 she went to Puerto Rico on vacation. She states that she met the applicant at the San Juan airport at that time. She asserts that the applicant first entered the United States by crossing the Canadian border into the United States. She states that he then traveled by airplane to Puerto Rico from New York. The affiant states that she knows that the applicant resided in Arecibo, Puerto Rico from November 1981 to August 1984 because they regularly spoke over the telephone. She asserts that the applicant was employed as a painter and a handyman. She goes on to say that the applicant flew from Puerto Rico to New York in August 1984 and then resided there until April 1990 and worked as a furniture delivery person at that time. The affiant states that the applicant did not leave the United States until April 1990 when he went to Trinidad to visit his family. The affiant then goes on to state that the applicant was denied when he attempted to apply for legalization in 1987 because he had left the United States in 1984 and returned legally. Though this affiant asserts that she saw the applicant while she was on vacation in November 1981, she does not indicate that she ever resided permanently in the United States. She further fails to state the frequency with which she saw the applicant in the United States during the requisite period other than to say that she saw him once while she was on vacation. She does not state whether there were periods of time during the requisite period when she did not see him. Though she indicates that the applicant was a delivery person when he resided in New York, he failed to indicate any employment on his Form I-687 submitted in 2005 pursuant to the CSS/Newman Settlement Agreements and he indicated that he was a painter for the duration of the requisite period on his Form I-687 submitted to establish class membership in 1990. Because this affidavit is lacking in detail, because the affiant is not consistent regarding the applicant's absences from the United States and because the affiant provides testimony that is not consistent with what the applicant indicated on his Form I-687, very minimal weight can be accorded to this affidavit as evidence that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] that was notarized on March 8, 2005 in Fort Lauderdale, Florida. The affiant states that he has known the applicant since 1979 when their families were involved with building the Edinburgh Temple in Trinidad. The affiant goes on to state that the applicant visited his house in Toronto, Canada in November 1981

and told him that he was going to go to Puerto Rico after driving across [the United States] border. The affiant states that he knows that the applicant resided in Arecibo, Puerto Rico from November 1981 until 1984 because he kept in touch with him and his family. He states that the applicant told him that he worked as a painter and a handyman. The affiant goes on to indicate that the applicant moved to New York in August 1984. He states that he met the applicant when he went to visit relatives in New York. He states that he knows that the applicant worked delivering furniture for [REDACTED]. However, he does not indicate the dates associated with this employment. The affiant states that the applicant did not leave the United States until April 1990 when he went to Trinidad to visit his family. The affiant goes on to state that the applicant was denied when he attempted to apply for legalization in 1987 because he had left the United States in 1984 and returned legally. These two statements are not consistent. Though this affiant asserts that he saw the applicant in New York when he went to visit relatives, he does not indicate when this visit occurred or state that whether it occurred during the requisite period. Therefore, the affiant has not provided testimony that indicates that he ever saw the applicant in the United States during the requisite period. This affiant also states that the applicant worked delivering furniture while he resided in New York. However, the applicant did not state that he was employed in this capacity during the requisite period on his Forms I-687 as noted above. Because this affidavit is lacking in detail, because the affiant is not consistent regarding the applicant's absences from the United States and because the affiant provides testimony that is not consistent with what the applicant indicated on his Form I-687, very minimal weight can be accorded to this affidavit as evidence that the applicant resided in the United States during the requisite period.

- Original photographs of the applicant and family members that affiants have submitted photocopies of and assert were taken in Puerto Rico in 1984.
- An affidavit from [REDACTED] that was notarized on February 21, 2005. The affiant, who indicates that she is the applicant's sister, submits photocopies of herself, her children and the applicant and a photocopy of passport # [REDACTED] issued to [REDACTED] and passport # [REDACTED] issued to [REDACTED] on November 10, 1981. Page 11 of this passport bears a multiple entry visa issued to the affiant and cancelled without prejudice. Page 13 of this passport indicates that the affiant was admitted to the United States in an illegible month in 1984. The affiant states that she traveled to Puerto Rico in July 1984 to visit her brother, the applicant. She states that the photocopies of photographs she is submitting picture her, her brother and her children. She states that she remembers that the applicant began residing in the United States in 1981. She states that the applicant traveled to Canada from Trinidad and Tobago, entered the United States by land and then flew to Puerto Rico by airplane. She asserts that the applicant resided in Puerto Rico from 1981 until about August 1984, at which time he moved to New York and began working as a deliveryman. She states that the applicant resided continuously in the United States from 1981 until he left to visit Trinidad and Tobago in April 1990 when he went to visit family. It is noted that the applicant indicated on his Form I-687 that he was absent from the

United States from May to June in 1984 when he went to Trinidad and Tobago. It is also noted that the applicant indicated on his Form I-687 submitted in 1990 to establish class membership that he was a painter rather than a delivery man for the duration of the requisite period. Though this affiant asserts that she saw the applicant while she was on vacation in July 1984, she does not indicate that she ever resided permanently in the United States. She further fails to state the frequency with which she saw the applicant in the United States during the requisite period other than to say that she saw him once while she was on vacation. She does not state whether there were periods of time during the requisite period when she did not see him. She further fails to mention whether the applicant returned to Trinidad and Tobago during the requisite period. Though she indicates that the applicant was a delivery person when he resided in New York, he failed to indicate any employment during the requisite period on his Form I-687 submitted in 2005 pursuant to the CSS/Newman Settlement Agreements and he indicated that he was a painter for the duration of the requisite period on his Form I-687 submitted to establish class membership in 1990. Because this affiant did not indicate that she resided in the United States during the requisite period, because affidavit is lacking in detail and because the affiant provides testimony that is not consistent with what the applicant indicated on his Form I-687, very minimal weight can be accorded to this affidavit as evidence that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] that was notarized on February 21, 2005 in Trinidad and Tobago. The affiant, whose maiden name was [REDACTED] submits photocopies of photographs and a photocopy of passport [REDACTED] issued to [REDACTED] by Trinidad and Tobago on November 10, 1981. Page 11 of this passport bears a multiple entry United States B-1 B-2 visa issued at the Port of Spain. Page 13 of this passport indicates that its bearer was admitted to the United States on July 16, 1984. The affiant states that she is the applicant's niece and asserts that she visited her uncle in Puerto Rico in 1984. Though this affiant asserts that she saw the applicant while she was on vacation in July 1984, she does not indicate that she herself ever resided permanently in the United States. She further fails to state the frequency with which she saw the applicant in the United States during the requisite period other than to say that she saw him once while she was on vacation. She does not state whether there were periods of time during the requisite period when she did not see him. She further fails to mention whether the applicant returned to Trinidad and Tobago during the requisite period. Because this affiant did not indicate that she resided in the United States during the requisite period, and because affidavit is lacking in detail, very minimal weight can be accorded to this affidavit as evidence that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] that was notarized on February 21, 2005 in Trinidad and Tobago. The affiant submits photocopies of photographs, and a photocopy of passport [REDACTED] issued to [REDACTED] by Trinidad and Tobago. Page seven of this passport contains a multiple entry visa into the United States issued on an illegible month in 1984 and page nine of this passport indicates that the affiant entered the United States on July

16, 1984. The affiant states that she is the applicant's niece. She states that she traveled to Puerto Rico in July 1984 to visit her uncle, the applicant. She asserts that the photocopies of the photographs that she has submitted picture her in Puerto Rico in 1984. Though this affiant asserts that she saw the applicant while she was on vacation in July 1984, she does not indicate that she herself ever resided permanently in the United States. She further fails to state the frequency with which she saw the applicant in the United States during the requisite period other than to say that she saw him once while she was on vacation. She does not state whether there were periods of time during the requisite period when she did not see him. She further fails to mention whether the applicant returned to Trinidad and Tobago during the requisite period. Because this affiant did not indicate that she resided in the United States during the requisite period, and because affidavit is lacking in detail, very minimal weight can be accorded to this affidavit as evidence that the applicant resided in the United States during the requisite period.

- An affidavit from the applicant that was notarized on August 15, 1990. The applicant states that he first entered the United States in November 1981 without inspection. He also states that he was absent from the United States from May 19, 1984 until June 16, 1986.

The director denied the application for temporary residence on October 16, 2006. In denying the application, the director stated that her office determined that the applicant filed his Form I-687 late, as it was filed on October 31, 2005. She went on to note that the applicant submitted affidavits from [REDACTED] and [REDACTED] as well as photographs in support of his application. The director stated that the applicant failed to submit contemporaneous evidence in support of his application. The director concluded by stating that the evidence submitted by the applicant did not allow him to meet his burden of proving that he was eligible to adjust to temporary resident status.

It is noted that the director incorrectly stated in her decision that the applicant's Form I-687 application, which was filed on October 31, 2005, was not filed timely. The AAO notes that though the initial filing deadline ended on May 23, 2005, on May 16, 2005 Citizenship and Immigration Services (CIS) announced that this deadline was extended until December 31, 2005. Therefore, the application was filed timely. However, the director's error is harmless 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 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).

The AAO withdraws the director's statement that the applicant did not file his Form I-687 application timely.

On appeal, the applicant stated that the district director denied his application without according due weight to the evidence he submitted in support of his application. He further submits a brief in support of his appeal.

In this brief, the applicant asserts that he first entered the United States as a tourist in November 1981, going from Toronto, Canada to New York. He states that in 1984 he visited Trinidad for three weeks to visit his grandfather. He asserts that soon after his return to Puerto Rico from this absence, his sister and her children came to visit him there. He states that he moved to New York and resided there until 1990. He states that he also traveled to Florida in June 1987 to attempt to apply for legalization, but that his application was denied at that time because he left the United States in 1984 and reentered legally. He details the evidence that he previously submitted in support of his application and asserts that this evidence is sufficient to meet his burden of proof. He further submits an additional affidavit in support of his application.

The affidavit from [REDACTED] that the applicant submitted with his appeal was notarized on March 2, 2004 in Hollywood, Florida. The affiant states that he has known the applicant since August 1984 when they met in New York at a Hindu Temple on Liberty Avenue. He asserts that the applicant worked at all religious functions and that they regularly met at this temple. However, he does not indicate the frequency with which he saw the applicant during the requisite period or state whether there were periods of time during the requisite period when he did not see the applicant. He asserts that the applicant worked for his friend delivering furniture at that time. The affiant goes on to state that he knows the applicant attempted to apply for legalization in 1987 but that he was denied at that time because he left the United States in May 1984 and reentered legally from that absence. Though the affiant states that he met the applicant at a temple in New York and asserts that the applicant was an active member of that temple during the requisite period, the applicant did not indicate that he was ever a member of any Hindu Temples in New York or elsewhere before 1990 on either of his Forms I-687. Though this affiant indicates that the applicant worked delivering furniture for his friend, the applicant did not indicate that he was ever employed delivering furniture on either of his Forms I-687.

The AAO has reviewed the evidence in the record that is relevant to the applicant's claim that he resided continuously in the United States for the duration of the requisite period and has found that the applicant has failed to meet his burden of proof. Though affiant [REDACTED] states that she met the applicant in December 1981 and that she employed him from 1982 to 1984 to do repair work on her house, she did not indicate the frequency with which she saw the applicant or state whether there were periods of time when she did not see the applicant. Affiant [REDACTED] stated that she saw the applicant in Puerto Rico in November 1981 when she was on vacation. However, she did not indicate in her affidavit that she saw him during the requisite period other than while she was on that vacation or otherwise state the frequency with which she saw the applicant during the requisite period. She states that she knows that the applicant resided in Puerto Rico and New York during the requisite period because she spoke with him on the telephone. Affiant Indar [REDACTED] states that he saw the applicant in November 1981 in Canada and that he saw him on

an unspecified date in New York when he went to visit relatives. However, he does not indicate the frequency with which he saw the applicant in the United States during the requisite period. In fact, he does not state that he ever saw the applicant in the United States during that period. As was noted above, affidavits from these affiants are significantly lacking in detail, such that they can only be accorded minimal weight as proof that the applicant resided in the United States for part or all of the requisite period.

Affiant [REDACTED] states that he met the applicant at a Hindu Temple in New York in 1984. However, the applicant did not indicate on either of his Forms I-687 that he was a member of any temples until June 1990, when he became a member of a Hindu Temple in Florida.

Though he has submitted affidavit from family members [REDACTED] and [REDACTED] in support of his application, these affiants only saw the applicant in Puerto Rico for a short period of time in 1984. They do not have personal knowledge of the events and circumstances of the applicant's continuous residence in the United States during the requisite period.

Affiants [REDACTED], and [REDACTED] state both that the applicant was not absent from the United States until 1990 and that he was absent from the United States in 1984. That these affiants contradict their own testimony casts doubt on their testimony regarding the applicant's absences from the United States during the requisite period.

The applicant has not submitted consistent testimony regarding his employment in the United States during the requisite period. He did not indicate any employment during that time on his Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements. He stated that he was employed as a painter for the duration of the requisite period on his Form I-687 submitted in 1990 to establish class membership. He has also submitted affidavits from affiants who state that he worked delivering furniture in New York from 1984 until 1990. These inconsistencies cast doubt on testimony in the record regarding the applicant's employment in the United States during the requisite period.

Lastly, the applicant has not been consistent regarding his manner of first entry into the United States. He has stated in his brief submitted with his appeal that he first entered the United States as a tourist in November 1981 when he traveled from Toronto, Canada to New York. However, in an affidavit submitted with his Form I-687 to establish class membership in 1990 he stated that he first entered the United States by traveling illegally in a car across the Canadian border into Buffalo, New York in November 1981. These inconsistencies cast doubt on the applicant's testimony regarding when, where and how he first entered the United States.

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).

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

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