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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-06-060-11550

Office: NEW YORK

Date: **AUG 27 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 "R. 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. Specifically, in her Notice of Intent to Deny (NOID), the director stated that it did not appear that the applicant attempted to file for legalization during the requisite period. The director stated that the applicant failed to meet his burden of proving that he resided continuously in the United States for the duration of the requisite period. The director granted the applicant 30 days within which to submit additional evidence in support of his application. In denying the application, the director stated that though the applicant asserted that he qualified for legalization because his father was front desked when he attempted to apply for legalization during the original filing period, because his father's application was accepted but denied during the original filing period, his father was not front-desked. The director went on to state that the applicant had also not submitted evidence that allowed him to meet his burden of proof. 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.

It is noted that the director raised the issue of class membership in the decision. Since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership.

On appeal, the applicant asserts that he is appealing the director's decision because believes the director did not fully consider 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 November 29, 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 stated his addresses in the United States during the

requisite period to be: [REDACTED] from August 21, 1981 until July 30, 1983; and [REDACTED] New York from August 1, 1983 until January 30, 1989. At part # 32 where the applicant was asked to state his absences from the United States, he indicated that he had no absences during the requisite period. He stated that his first and only absence from the United States was from December 1989 to June 1990. 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 at Burger King from October to December in 1983; Indian Supermarket, Inc. as a cashier from April 1984 to July 1986; and as a helper at Wireless Link Inc. from October 1987 to November 1988. It is noted that the applicant's date of birth is August 23, 1970. Therefore, he would have remained a minor for the duration of 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

The director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant on January 11, 2006. In this NOID, the director stated that the applicant failed to submit evidence: that he entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date he (or his parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for

legalization; that he was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that he (or his parent or spouse) tried to apply for legalization; and that he was admissible as an immigrant. 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 letter dated February 10, 2006. In this letter, the applicant states that he enclosed more than 100 pages of supporting documents with his application. He states that he is enclosing a notarized affidavit from his father with his response to the NOID.

The affidavit from the applicant's father was notarized in Guatemala on November 10, 2005. The affiant states that he and the applicant first entered the United States on August 21, 1981. He states that they entered without inspection and then traveled to the home of a woman named [REDACTED] in Ozone Park, New York. He goes on to say that he first met [REDACTED] in Guatemala. He claims he traveled to Mexico from February 28, 1983 to April 8, 1983. He states that he went to the office of the former Immigration and Naturalization Service (INS) on April 20, 1988 in Long Island City to file an application for legalization, but his application was rejected by INS when he stated that he had traveled to Guatemala without proper authorization. He states that he went to another INS office on July 12, 1988 that was located on [REDACTED] New York and that while he was there, he was given an interview date of September 24, 1988. He states that when he appeared for that interview he was requested to submit additional evidence regarding his absence from the United States and then to appear for another interview on December 29, 1988. He states that because he did not speak English fluently, this interview was rescheduled for February 12, 1989. He states that an officer denied his application at the time of that interview because of his absence in 1983.

In addition to the applicant's letter and his father's affidavit submitted in response to the NOID, the record contains the following evidence that is relevant to the applicant's claim that he maintained continuous residence in the United States for the duration of the requisite period:

1. A Legalization Front Deskling Questionnaire on which the applicant's father indicates that he attempted to submit his legalization application but was turned away on April 20, 1988. He states that he has resided in the United States since August 20, 1981. This form is dated November 29, 2000.
2. An affidavit from the applicant that was notarized November 21, 2005. The applicant states that he qualifies to apply for legalization because his father attempted to apply for legalization during the original legalization filing period and his application was rejected at that time.
3. An affidavit from [REDACTED] that was notarized on October 20, 2005. The affiant submits a photocopy of her Certificate of Naturalization, issued to her in Miami, Florida in 1996, a photocopy of her Florida Driver's License issued in November 2004, and an

undated mortgage receipt issued to the affiant for a property at 107-09 104th Street in Queens, New York. The affiant states that she knows that the applicant and his father entered the United States in August 1981. She asserts that they resided with her from August 1981 to July 30, 1983. She states that they then resided on 103rd Ave. in Richmond Hill where she visited them.

4. An affidavit from [REDACTED] that was notarized on August 10, 2005. The affiant submits photocopies of two lease agreements for an apartment on Lamont Avenue. One lease agreement in 1978 and ended in 1981 and the second began in 1981 and ended in 1984. The affiant states that he has known the applicant and his father since they both first entered the United States in August 1981. He states that he knows that the applicant's father went to Guatemala from February to April in 1983 because of an emergency. He claims that he visited them when they resided in Ozone Park until July 30, 1983 and then that he visited them when they resided on [REDACTED]. He states that the applicant and his father then moved to Lamont Avenue in Elmhurst where they have both resided since 1989. It is noted that the applicant indicated on his Form I-687 that he was absent from the United States from December 1989 until June 1990. It is also noted that the applicant's father has submitted an affidavit dated November 10, 2005 on which he states that he permanently left the United States in December 1989.
5. An affidavit from [REDACTED] that was notarized on August 10, 2005. The affiant submits a photocopy of his Permanent Resident Card with his affidavit. The affiant states that he has known the applicant since August 21, 1981. He states that he visited the applicant and his father when they resided on [REDACTED] until July 30, 1983. He states that the applicant's father was absent from February 26, 1983 until April 8, 1983. He states that the applicant and his father then moved to [REDACTED] where they resided until January 30, 1989. He states that the applicant and his father then moved to Lamont Avenue in Elmhurst, New York and that they have resided there continuously since February 1989. It is noted that the applicant indicated on his Form I-687 that he was absent from the United States from December 1989 until June 1990. It is also noted that the applicant's father has submitted an affidavit dated November 10, 2005 on which he states that he permanently left the United States in December 1989.
6. An affidavit from [REDACTED] that was notarized on October 4, 2005. The affiant submits a photocopy of his New York State Drivers License issued in 1987 and a photocopy of the identity page of his United States Passport with his affidavit. He states that he employed the applicant at Indian Supermarket, Inc. from April 24, 1984 until July 15, 1986 in Flushing, New York.
7. An affidavit from [REDACTED] that was notarized on October 19, 2005. The affiant submits photocopies of his New York Driver's License and his Resident Alien Card with his affidavit. The affiant states that the applicant was hired and began working at Burger King in 1983.

8. An affidavit from [REDACTED] that was notarized on an unspecified date. The affiant submits a photocopy of her Social Security Card and a photocopy of the identity page of her United States Passport with her affidavit. The affiant states that the applicant and his father were her neighbors while she resided on [REDACTED] New York. She states that she first met the applicant because he was her neighbor and because he worked at Burger King with her. She states that she worked at Burger King beginning in October 1983. It is noted that this affiant's date of birth is May 8, 1973. Therefore, she would have been ten years old when she indicates she began her employment with Burger King.
9. An affidavit from [REDACTED] that was notarized on August 5, 2005. The affiant states that she met the applicant in August 1983 because he and his father were her tenants. She also states that she worked with the applicant's father at [REDACTED] Inc. from October 1981 until July 1987. The affiant states that she knows that the applicant's father's application for legalization was rejected when he tried to submit it during the original filing period. She states that she wrote an affidavit for him at that time as well.
10. An affidavit from [REDACTED] that was notarized on August 5, 2005. The affiant submits a photocopy of her New York State Identification Card and her Social Security Card with her affidavit. The affiant states that she worked at Velca Fashions Inc. in Brooklyn from 1979 until October 1998 and that the applicant's father worked there from October 1981 until July 1987. She states that she personally knows that the applicant and his father resided in the United States since August 1981 and that the applicant's father attempted to apply for legalization during the original filing period. She states that she wrote an affidavit for the applicant's father when he did so. Though the affiant states that the applicant and his father left the United States on December 19, 1989 and that the applicant then returned to the United States with his wife on June 20, 1990, she also states that the applicant has been her neighbor since August 1983 and has resided in the same 2nd floor apartment since that time.
11. An affidavit from [REDACTED] that was notarized in November 2005. The affiant submits a photocopy of his Certificate of Naturalization issued to him on March 8, 1989 and his New York State Identification Card with his affidavit. The affiant states that he himself first entered the United States in June 1980. He asserts that he has known the applicant since 1983. He states that he saw the applicant once or twice a week because they were neighbors. He states that he knows that the applicant's father attempted to submit his application for legalization during the original filing period but was rejected at that time. He states that the applicant and his father left the United States on December 19, 1989.
12. An affidavit from [REDACTED] that was notarized on October 10, 2005. The affiant submitted a photocopy of her Social Security Card and a photocopy of the identity page of her United States passport with her affidavit. The affiant states that she currently works at Wireless Link, Inc. and that she has worked there since 1987. She states that she has known

the applicant since 1984 when he became her co-worker at the Indian Supermarket. She states that she worked at this supermarket from 1982 until 1984. The affiant states that she and the applicant also worked together at Wireless Link, Inc. from October 1987 until November 1988. She states that she knows that the applicant has resided in the United States since 1981 and that she knows that the applicant's father, Francisco attempted to submit an application for legalization during the original filing period in 1988 but was rejected at that time. However, the affiant has stated that she did not meet the applicant until 1984 and therefore, she could not have personal knowledge of the applicant's residence in the United States on a date before that time.

13. An employment verification declaration from Burger King that is dated December 30, 1983 and is signed by [REDACTED]. This declaration states that the applicant was employed by Burger King from October 14, 1983 until December 24, 1983.
14. An employment verification declaration from Indian Super Market signed by [REDACTED] and dated July 21, 1986. The declarant states that the applicant worked for the supermarket from April 10, 1984 until July 15, 1986. The declarant fails to indicate how he determined the applicant's start and end dates as his employee. He did not state whether there were periods of unemployment that occurred while the applicant was working at this company. Because this declaration is significantly lacking with regards to the criteria that the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states employment declarations must adhere to, it can be accorded only minimal weight as evidence that the applicant resided in the United States from April 10, 1984 to July 15, 1986.
15. An employment verification declaration signed by [REDACTED] of Wireless Link, Inc. that is dated November 27, 1988. This declaration states that the applicant worked for Wireless Link, Inc. from October 4, 1987 until November 20, 1988. The declarant fails to indicate how he determined the applicant's start and end dates as his employee. He did not state whether there were periods of unemployment that occurred while the applicant was working at this company. Because this declaration is significantly lacking with regards to the criteria that the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states employment declarations must adhere to, it can be accorded only minimal weight as evidence that the applicant resided in the United States from October 4, 1987 until the end of the requisite period.
16. A photocopy of passport [REDACTED] issued to the applicant's father on December 4, 1981 in Guatemala. This indicates that the applicant's father was present in Guatemala on that date. It is noted that the applicant has submitted a copy of his father's Form I-687. This Form I-687 indicates that his father began to reside in the United States in August 1981 and was not absent from the United States until February 26, 1983. Because this passport was issued to the applicant's father in Guatemala in December 1981, doubt is cast on his claim of having entered the United States in August 1981 and then residing continuously in the United States until February 1983.

17. Appointment notices that indicate that [REDACTED] had CSS/LULAC appointments at INS offices in New York on July 12, 1988; September 24, 1988; December 2, 1988; and February 12, 1989.
18. A Form for Determination of Class Membership in CSS v. Meese that is signed by the applicant's father and is dated July 12, 1988.
19. A purchaser's receipt for a money order dated April 26, 1988. This receipt does not indicate who purchased this money order. Therefore, it is not clearly associated with the applicant.
20. An employment verification letter that is dated October 26, 1981. This letter was signed by [REDACTED] who indicates that he or she is the general manager of Burger King. This letter indicates that the applicant's father worked at a Burger King from September 6, 1981 until October 24, 1981.
21. A declaration from Velca Fashions, Inc. This declaration is dated October 17, 1987 and is signed by [REDACTED] who indicates he is the president of the company. This declaration states that the applicant's father worked for Velca Fashions as a porter and a janitor from October 30, 1989 until July 16, 1987. These dates are clearly in error, as the applicant's father cannot have begun his employment after the date of the letter. Because the dates associated with this employment on this letter contain an error, it is not clear when this employer is stating he began to employ the applicant's father.
22. A declaration from Fleet Street, Ltd. that is dated March 10, 1988. This letter was signed by [REDACTED] who indicates that she is the director of personnel. This letter indicates that the applicant's father worked as a porter at Fleet Street, Ltd. beginning on September 1, 1987.
23. An affidavit from [REDACTED] that was notarized on April 2, 1988. The affiant submits a photocopy of his New York Driver's License with his affidavit. The affiant states that he has known the applicant since August 1983. The affiant states that he is submitting his affidavit in support of the applicant's father's late amnesty claim. He asserts that the applicant's father entered the United States before January 1, 1982 and then resided continuously until May 4, 1988. It noted that there was not yet a late amnesty program on the date this affidavit was notarized. It is also noted that this affiant has stated that the applicant resided continuously in the United States through a date that is subsequent to the date he signed the affidavit. That the affiant signed a notarized document on which he stated that he knows that the applicant resided in the United States on a date that had not yet occurred casts doubt on the credibility of statements made by this affiant.
24. An affidavit from [REDACTED] that was notarized on April 16, 1988. The affiant submits a photocopy of his Certificate of Naturalization issued on May 13, 1999 and

a photocopy of his New York State Driver's License with his affidavit. The affiant states that he has worked for Velca Fashions, Inc. since February 1981. He states that he has known the applicant's father since 1981 when he met him in the United States at his place of work. The affiant states that he is submitting his affidavit in support of the applicant's father's late amnesty claim. He asserts that the applicant's father entered the United States before January 1, 1982 and then resided continuously until May 4, 1988. It noted that there was not yet a late amnesty program on the date this affidavit was notarized. It is also noted that this affiant has stated that the applicant resided continuously in the United States through a date that is subsequent to the date he signed the affidavit. That the affiant signed a notarized document on which he stated that he knows that the applicant resided in the United States on a date that had not yet occurred casts doubt on the credibility of statements made by this affiant.

25. An affidavit from [REDACTED] that was notarized on April 2, 1988. The affiant submits his Employment Authorization card with his affidavit. The affiant states that the applicant and his father have resided next door to him since August 1983. The affiant states that he is submitting his affidavit in support of the applicant's father's late amnesty claim. He asserts that the applicant's father entered the United States before January 1, 1982 and then resided continuously until May 4, 1988. It noted that there was not yet a late amnesty program on the date this affidavit was notarized. It is also noted that this affiant has stated that the applicant resided continuously in the United States through a date that is subsequent to the date he signed the affidavit. That the affiant signed a notarized document on which he stated that he knows that the applicant resided in the United States on a date that had not yet occurred casts doubt on the credibility of statements made by this affiant.
26. An affidavit from [REDACTED] that was notarized on March 15, 1988. The affiant states that she resides in Richmond Hill, New York and that he has worked at Velca Fashions, Inc. since 1979. She states that the applicant's father has worked for Velca Fashions, Inc. since October 30, 1981 and has rented an apartment in her building since August 1, 1983.
27. An affidavit from [REDACTED] that was notarized on March 15, 1988. The affiant states that she has resided in the United States in Richmond Hill since 1978. She goes on to state that the applicant's father is her co-worker at Velca Fashions, Inc. and that he is her neighbor. She states that the applicant's father began working for Velca Fashions in October 1981 and that he has resided in Richmond Hill since August 1983.
28. An affidavit from [REDACTED] that was notarized on March 16, 1988. The affiant states that she knows the applicant's father, [REDACTED]. She states that the applicant and his father resided in her house from August 21, 1981 until July 30, 1983 and then they began to reside in South Richmond Hill.

The director of the New York District Office issued a second NOID to the applicant on May 15, 2006. In the NOID, the director stated that the applicant did not attempt to file a Form I-687

during the original filing period. The director went on to say that because the applicant stated that he did not travel outside of the United States prior to 1989, he could not have been turned away by an immigration official during the original filing period. The director further stated that evidence that the applicant submitted in support of his application lacked probative value. The director stated that she was denying the applicant pursuant to Immigration and Nationality Act (Act) § 212(a)(6)(C)(i), which states in pertinent part that applicants who, by fraud or willfully misrepresenting a material fact, seeks to procure (or who has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit under this Act is inadmissible. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to this second NOID, the applicant submitted a letter dated May 14, 2006. In this letter, the applicant stated that he qualifies to apply for legalization under the Settlement Agreements because his father was turned away because of a brief absence prior to his attempt to apply for that benefit during the original filing period. He also re-submits the affidavit from his father that is dated November 10, 2005 and he submits a photocopy of his father's Form I-687.

The Form I-687 from [REDACTED] is dated April 20, 1988. At part #32 where the applicant's father was asked to list all of his children, he indicated that the applicant, his son, was with him. His addresses of residence are stated consistently with those the applicant indicated he resided at during the requisite period. At part #35 where [REDACTED] was asked to indicate his absences from the United States, he indicated that he was absent from February 26, 1983 until April 8, 1983. At part #36 of this application, where the applicant's father was asked to list his employment, he indicated that he was employed by: Burger King from September 6, 1981 until October 24, 1981; by Velca Fashions, Inc. from October 30, 1981 until July 16, 1987 and then by Fleet Street, Ltd. From September 1, 1987 until the date he signed his Form I-687.

The director denied the application for temporary residence on June 21, 2006. The director stated that she was denying the application for the following reasons:

1. The applicant submitted evidence that indicated his father's application was accepted for interview on September 24, 1988 and he was interviewed on February 12, 1989. The applicant also submitted evidence that stated his father's application was denied because an officer determined that he had not maintained continuous residence in the United States because of his absence in 1983. Because the applicant submitted evidence that his father's application was accepted and then denied, the director determined that his father had not been front-desked.
2. The director also found that the applicant failed to meet his burden of proving that he himself resided continuously in the United States for the duration of the requisite period.
3. The director found documents the applicant submitted lacked probative value such that she found the applicant ineligible pursuant to the Act § 212(a)(6)(C)(i).

On appeal, the applicant asserts that the director failed to sufficiently review the documents he submitted in support of his application.

The AAO has reviewed the evidence the applicant has submitted in support of his claim that he resided continuously in the United States for the duration of the requisite period and has found that he has not satisfied his burden of proof.

As was previously noted, the director discussed the applicant's father's class membership. However, this case was considered on the merits. Since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership.

The applicant has submitted numerous declarations and affidavits in support of his claim that he maintained continuous residence in the United States. However, the AAO noted inconsistencies within these documents as follows: 1) affiants [REDACTED] submitted affidavits in August 2005 in which they indicate that the applicant's father has resided in Elmhurst continuously since 1989. However, the applicant's father stated in his November 10, 2005 affidavit that he permanently left the United States in December 1989; 2) the applicant's father's passport was issued to his father in Guatemala on December 4, 1981. This indicates that the applicant's father was in Guatemala at that time. This casts doubt on the applicant's father's claim that he first entered the United States in August 1981 and then was not ever absent from the United States until February 1983; 3) though the applicant has submitted employment verification declarations from Indian Super Market and Wireless Link, Inc., these declarations were lacking with regards to the criteria the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states employment declarations must adhere to; 4) lastly, the applicant has submitted affidavits from [REDACTED] that were notarized in April 1988, yet state that they are submitting their affidavits in support of the applicant's father's late amnesty claim and that they know that the applicant's father resided in the United States until May 4, 1988. Because there was not yet a late amnesty program in April 1988 and because these affiants state that the applicant's father resided in the United States until May 1988 when they signed these affidavits one month prior to that date, doubt is cast on these affidavits.

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).

Though the director stated that she was denying the applicant pursuant to Act § 212(a)(6)(C)(i), she did not specify which documents in the record caused her to conclude that the applicant had attempted to seek a benefit by fraud or willfully misrepresenting a material fact. However, doubt

is cast on the credibility of several documents submitted, as noted above, in support of the application.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period, as well as the inconsistencies 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.