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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC-06-088-11388

Office: LAS VEGAS

Date: JUL 17 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:



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, Las Vegas. 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 resided in the United States since 1978.

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 on December 27, 2005.¹ 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 that during the requisite period he resided in San Fernando, California from May 1980 until February 1986, Pacoima, California from February 1986 until November 1987 and Sylmar, California from November 1987 until May 1988. At part #33, he showed that during the requisite period he was employed the following positions: as a self-employed laborer in California from August 1971 until October 1985; as a laborer with ██████████ Construction in Los Angeles, California from October 1980 until October 1985 and June 1986 until 1988; as a laborer with Chic Construction in Los Angeles, California from October 1985 until May 1986; and as a laborer with Davison Masonry in Sun Valley, California from May 1986 until June 1986.

¹ The record reveals that the applicant filed a Form I-687 application on May 4, 1988 during the original legalization application period. On September 1, 1989, the director, Western Service Center, denied this application because the applicant twice failed to appear for his interview.

The applicant submitted numerous documents in support of his Form I-687 application. This proceeding will focus on the documents that relate to the applicant's continuous residence in the United States during the requisite period. The applicant submitted the following documentation:

- An original statement from the Social Security Administration, showing that he was employed in the United States from 1972 until 1980 and in 1986. This document is evidence of the applicant's residence in the United States in 1986 and entry into the United States prior to January 1, 1982.
- Identical affidavits from [REDACTED] and [REDACTED] respectively dated December 16, 2006 and December 17, 2005. The affidavits state that the affiants have known the applicant since 1980. The affidavits further state that the affiants have knowledge of the applicant's residence in San Fernando from 1980 to 1986; Pacoima from 1986 to 1987; and Sylmar from 1987 to 1988. The affidavits fail to convey how the affiants first became acquainted with the applicant. Additionally, the affidavits do not establish the affiants' relationship with the applicant during the requisite period. Given these deficiencies, these affidavits are of little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.
- A fill-in-the-blank affidavit from [REDACTED] dated December 17, 2005. This affidavit provides that the affiant has personal knowledge of the applicant's residence at San Fernando, California from 1981 until 1986; Pacoima, California from 1986 until 1987; and Sylmar, California from 1987 until 1988. The affidavit states that the affiant is able to determine the date of the beginning of his acquaintance with the applicant in the United States because he has known the applicant since childhood. This affidavit fails to establish the affiant's relationship with the applicant during the requisite period. The affiant has not established his direct personal knowledge of the applicant's continuous residence in the United States. Therefore, this affidavit is of little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.
- A copy of a United States Post Office money order receipt showing the applicant's name as the purchaser of the money order. The receipt is issued to the applicant at [REDACTED], Sylmar, California. The applicant indicated on his Form I-687 application that he resided at this address from November 1987 until May 1988. However, the receipt does not show the date that it was issued to the applicant. Therefore, this document is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A copy of a handwritten Rediform receipt, dated May 2, 1988. This receipt is addressed to the applicant and shows his address as [REDACTED]. However, the receipt does not identify the address of the entity that issued it or the reason it was issued. Therefore, there is no information on the receipt showing that it was issued in the United States. Given this

deficiency, it is without any probative value as evidence of the applicant's residence in the United States in May 1988.

- Copies of three envelopes the applicant mailed to Mexico. The envelopes bear United States postage stamps and postmarks dated April 9, 1986, December 2, 1986 and May 27, 1986 from Van Nuys, California. The envelopes are evidence of the applicant's presence in the United States on those dates.
- Copies of three earnings and deduction statements from Chic Construction, Inc., located at [REDACTED] Los Angeles California. Two of these statements were issued for the applicant's employment with this company on the following dates: March 24, 1986 until March 28, 1986 and May 5, 1986 until May 9, 1986. The applicant submitted a poor copy of the third receipt, rendering the dates on the receipt illegible. However, a copy of the receipt appears elsewhere in the record and shows the dates of his employment as April 21, 1986 until April 25, 1985. These documents are evidence of the applicant's residence in the United States from March 1986 until May 1986.
- Copies of two envelopes mailed from Mexico addressed to the applicant at [REDACTED] [REDACTED] [sic], California. The envelopes bear Mexican postage stamps and postmarks dated April 22, 1988 and April 25, 1988. The envelopes are evidence of the applicant's residence in the United States in April 1988.
- A copy of a picture identification card from the Kennedy-San Fernando Community Adult School located in San Fernando, California. This identification card was issued on an unrecorded date for the 1985 through 1986 school year. The card bears a photograph of the applicant and a faded signature. The record contains another copy of this identification card that more clearly shows the applicant's signature at the bottom of the card. This document is evidence that the applicant resided in the United States at some point in time during the 1985 through 1986 academic year.
- A copy of the applicant's California Identification Card showing his address as [REDACTED] [REDACTED] Norwalk, California. The applicant's Form I-687 application shows that he resided at this address from 1975 until January 1980. The identification card indicates that it expired in 1981. Therefore, it is evidence of the applicant's entry into the United States prior to January 1, 1982.
- A copy of the applicant's California Driver License showing his address as [REDACTED] [REDACTED] Norwalk, California. The driver license indicates that it expired in 1978. Therefore, this document is evidence of the applicant's entry into the United States prior to January 1, 1982.
- A copy of the applicant's Social Security Card showing the applicant's address as [REDACTED] [REDACTED], Pacoima, California. The applicant indicated on his Form I-687 application

that he resided at this address from August 1971 until 1975. Although the applicant's Social Security Card does not show a date of issue, his Social Security statement indicates that he used his Social Security number to report his earnings from 1972 until 1980 and in 1986. Therefore, this document is additional contemporaneous evidence of his residence in the United States in 1986 and entry into the United States prior to January 1, 1982.

Copies of two envelopes the applicant mailed to Mexico. The envelopes bear United States postage stamps and postmarks dated September 1980 and August 11, 1980 from Van Nuys, California. The envelopes are evidence of the applicant's entry into the United States prior to January 1, 1982.

- An affidavit from [REDACTED], dated November 4, 2006. This affidavit provides:

I, [REDACTED], resident of; [REDACTED], San Fernando CA 91340, [REDACTED], hereby declare under oath that I am a naturalized U.S. Citizen. I hereby declare that I have personally known: [REDACTED] [s]ince April 1980. I became acquainted with Mr. [REDACTED] when he came to rent a back house in above-referenced address. He lived here from May 1980 though February 1986. I to date work in the construction business and to the best of my recollection he worked in construction during his [sic] this period. [REDACTED] also continues to work in construction. He was a good tenant and paid his rent on time. In these years of living as neighbors (1980-1986) we became friends and now only frequent each other once in a while, but we do call each other. . . .

This affidavit fails to establish the affiant's landlord-tenant relationship with the applicant. Relevant details would include whether they had a rental agreement, the amount of rent the applicant paid, and the applicant's household obligations/duties. Furthermore, the affiant's assertion that the applicant "came to rent a back house" is an ambiguous statement. It is unclear whether the applicant resided with the affiant in his home or if the applicant resided in another dwelling on the affiant's property. Given these deficiencies, this affidavit is of little probative value as evidence of the applicant's continuous residence in the United States from May 1980 until February 1986.

- Identical fill-in-the-blank affidavits from [REDACTED] and [REDACTED], dated November 1, 2006. These affidavits provide that the affiants have known the applicant since 1971. They state that to the affiants' personal knowledge the applicant has resided in the United States at the following locations: Pacoima, California from August 1971 until January 1975; Norwalk, California from January 1975 until January 1980; El Monte, California from January 1980 until May 1980; San Fernando, California from May 1980 until February 1986; Pacoima, California from February 1986 until November 1987; and Sylmar, California from February 1987 until May 1988. The affidavits further state that the affiants are able to determine the date of the beginning of their acquaintance with the applicant in the

United States because the applicant rented a room from their parents at [REDACTED], Pacoima, California. The applicant's Form I-687 application shows that he resided at this address from August 1971 until 1975. Although the affidavits explain how the affiants first became acquainted with the applicant, they fail to detail the affiants' relationship with the applicant during the requisite period. The affidavits do not establish that the affiants have direct personal knowledge of the applicant's continuous residence in the United States during the requisite period. Given this deficiency, these affidavits are of little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

- An affidavit from [REDACTED], dated November 9, 2006. This affidavit provides, "I, [REDACTED] . . . hereby declare under oath that I have personal recollection of; [REDACTED] [h]aving worked in construction from 1982-1985. In these years of working he was paid in cash." This affidavit does not convey how the affiant first became acquainted with the applicant. Moreover, it does not explain the origin of the information the affiant has attested to. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's continuous residence in the United States from 1982 until 1985.
- Three affidavits that are similarly of little probative value as evidence of the applicant's continuous residence in the United States during the requisite period:
 - An affidavit from [REDACTED] dated November 3, 2006, which provides, "I have known [REDACTED] since 1971. We both came to the U.S. in the same year. I met [REDACTED] through construction work and since then we remain in contact. . . . Now, both of us have our families in the U.S. and live a little apart [sic] since Juan has resided in Las Vegas, Nevada since 1996. We remain friends to date. I attest to the fact that [REDACTED] has resided in the U.S. since 1971. He has always worked in construction as I have too. . . .";
 - An affidavit from [REDACTED], dated November 4, 2006, which provides, ". . . I have personally known: [REDACTED] [s]ince 1972. I became acquainted with Mr. [REDACTED] through work and family reunions. When I was in my early 20's I got to work in the construction business and I became acquainted with [REDACTED]. We became friends and still [sic] to date, despite the fact that we are not living close by, we still frequent each other. . . ."; and
 - An affidavit from [REDACTED], dated November 10, 2006, which provides, ". . . I know Mr. [REDACTED] since December 1973. I first met Mr. [REDACTED] when he moved to my neighborhood in the city of Norwalk; [REDACTED] and we became neighbors. I have always maintained a wonderful relationship with [REDACTED]

These affidavits do not establish the affiants' relationship with the applicant during the requisite period. Relevant details would include the type and frequency of contact the affiants maintained with the applicant during the requisite period. Furthermore, the affidavits do not establish the affiants' direct personal knowledge of the applicant's continuous residence in the United States during the requisite period. Given these deficiencies, the affidavits are of little probative value as evidence of the applicant's residence in the United States during the requisite period.

- A fill-in-the-blank affidavit from [REDACTED] dated November 10, 2006. This affidavit provides that the affiant has personal knowledge that the applicant has resided in the United States in Los Angeles, California from November 1980 until present. The affidavit states that the affiant is able to determine the date of the beginning of his acquaintance with the applicant in the United States because he hired the applicant for employment on this date. The affidavit further states, "[h]e was working for many years. He is a good hard worker, very honest, good friend. We visit each other from time to time. We have a good friendship ever since." This affidavit is vague because it fails to specify the cities within Los Angeles County where the applicant resided during the requisite period. Additionally, the affidavit does not establish the affiant's relationship with the applicant during the requisite period. Moreover, the affiant's assertion that the applicant resided in Los Angeles, California from November 1980 until present is inconsistent with the applicant's Form I-687. **The applicant's Form I-687 shows that he moved to Las Vegas, Nevada in 1996.** This inconsistency further draws into question whether the affiant has direct personal knowledge of the applicant's continuous residence in the United States during the requisite period. Therefore, the affidavit is without any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.
- A letter from [REDACTED], President, Majestic Pools and Landscapes Inc., dated November 14, 2006. This letter provides, "I have known [REDACTED] since 1980. I have seen him on some of our job sites, and he is reliable, dependable and a hard worker. . . ." The regulation at 8 C.F.R. § 245a.2(d)(3)(i), in part, provides that letters from employers must include: the applicant's address at the time of employment; exact period of employment; periods of lay off; and duties with the company." This letter fails to comply with these delineated guidelines. Therefore, it is without any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.
- Copies of handwritten Rediform receipts, dated November 24, 1974; September 29, 1985; and July 2, 1980. These receipts are addressed to the applicant. However, the receipts do not identify the address of the entity that issued them or the reasons they were issued. Therefore, there is no information on the receipts to indicate that they were issued in the United States. Given this deficiency, these documents are without any probative value as evidence of the applicant's residence in the United States during the requisite period.

A copy of a money order claim receipt from Continental Express, located in Los Angeles, California, dated September 30, 1986. The name of the person who received this receipt is illegible. Therefore, it is without any probative value as evidence of the applicant's residence in the United States in September 1986.

- A copy of an invoice issued to the applicant from the Valley Medical Center, located in Van Nuys, California. This invoice, dated October 24, 1978 shows that he applicant received medical treatment at the center on October 3, 1978, October 5, 1978 and October 9, 1978. This statement is evidence of the applicant's residence in the United States prior to January 1, 1982.
- A copy of a certified mail receipt issued to the applicant bearing a postmark dated June 24, 1980 from Van Nuys, California. This document is evidence of the applicant's entry into the United States prior to January 1, 1982.
- A copy of an invoice for masonry work, dated February 28, 1979, issued to the [REDACTED] Construction Company, Inc., located in Panorama City, California. The applicant's name is not listed on this invoice. Therefore, it is without any probative value as evidence of the applicant's residence in the United States.

A copy of a receipt issued to the applicant, dated February 21, 1986, from the California Department of Motor Vehicles for his driver's license application fee. The record also contains a copy of the applicant's California Driver License, issued February 21, 1986. These documents are evidence of the applicant's residence in the United States in February 1986.

- A copy of a money order receipt from the Golden State Sanwa Bank, dated January 28, 1980, issued to the applicant. This receipt is evidence of the applicant's entry into the United States prior to January 1, 1982.

A copy of a Blue Shield of California insurance card showing the applicant as the subscriber of the insurance policy with an effective date of August 27, 1978. This document is evidence of the applicant's entry into the United States prior to January 1, 1982.

- Copies of two student identification cards from the Kennedy-San Fernando Community Adult School. These cards were issued on unrecorded dates for the 1985 through 1986 and 1986 through 1987 academic years. The cards bear the applicant's signature and indicate that he is a member of the student body. These documents are evidence that the applicant resided in the United States at some point in time during the 1985 through 1986 and 1986 through 1987 school years.
- A copy of a handwritten statement of earnings and deductions issued to the applicant. The statement indicates that it was issued for the period ending March 23, 1983. However, it

does not show the name and address of the employer who issued it. Therefore, there is no information on the statement to indicate that it was issued in the United States. Given this deficiency, this document is without any probative value as evidence of the applicant's residence in the United States in March 1983.

A copy of a reminder notice issued to the applicant from Stanton Kramer & Associates, Los Angeles, California. This notice is addressed to the applicant at [REDACTED], Norwalk, California. The applicant indicated on his Form I-687 application that he resided at this address from 1975 until January 1980. However, the notice does not show the date that it was issued to the applicant. Therefore, this document is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- A copy of an invoice, dated January 15, 1981, from the Santa Monica Plaza Medical Group, located in Santa Monica, California. This invoice is addressed to the applicant at [REDACTED], San Fernando, California. The applicant's Form I-687 corroborates that he resided at this address in January 1981. Therefore, this document is evidence of the applicant's entry into the United States prior to January 1, 1982.

On December 11, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director found that the applicant's Social Security statement fails to show employment activity during the periods of 1981 through 1985 and 1987 through 1990. The director noted that to fill in the gaps for the requisite period, the applicant submitted affidavits, pay stubs and mail (envelopes). The director found that the pay stubs and envelopes correspond to the same time periods reflected on the applicant's Social Security statement. The director stated that regarding the affidavits, CIS was only able to contact one of the affiants, Mr. [REDACTED]. The director stated that Mr. [REDACTED] testified he no longer saw the applicant on a regular basis after 1980. The director noted that the other affiants either did not have phone numbers or no one answered when they were called. The director concluded that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status since that date through May 4, 1988.

In response to the NOID, the applicant, through counsel, resubmitted the applicant's documentary evidence. Counsel indicated that affidavits from former employers and acquaintances would be furnished to establish the applicant's residence in 1982 and 1983. However, the record shows that such affidavits were never submitted. Counsel furnished the following additional documentation:

- A copy of a handwritten receipt, dated July 23, 1984, issued to the applicant from The Santa Monica Hospital, located in Santa Monica, California. The date on this receipt appears to have been altered. As discussed below, in denying the application the director advised that if the applicant decides to appeal the decision he should submit an original of this document. However, on appeal, the applicant failed to submit an original of this receipt or explain the

reason an original could not be submitted. Therefore, this receipt is without any probative value as evidence of the applicant's residence in the United States in July 1984.

- A copy of a handwritten receipt, dated June 1982, issued to the applicant from the Anaheim Medical Group. This receipt does not state the location of the Anaheim Medical Group. Therefore, there is no indication that this receipt was issued in the United States. Given this deficiency, this receipt is without any probative value as evidence of the applicant's residence in the United States in June 1982.
- An affidavit from the applicant attesting to his continuous unlawful residence in the United States during the requisite period. According to the regulation at 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.

On January 29, 2007, the director issued a decision to deny the application for temporary resident status. In denying the application the director found that the receipt from The Santa Monica Hospital, dated July 23, 1984, appears altered. The director noted that if the applicant decides to appeal the decision he should submit an original of this document. The director determined that the applicant's documentation only establishes his presence in the United States prior to 1981 and from 1985 until the end of the requisite period. The director concluded that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status since that date through May 4, 1988.

On appeal, the applicant asserts that during his interview he was nervous and confused regarding dates. The applicant states that he has resided in the United States since 1978. The applicant states that he does not have receipts for bills because he was paid in cash and he paid all of his bills in cash. The applicant notes that his date of travel was in 1987 instead of 1988.

The applicant's statement on appeal fails to overcome the basis for the director's denial. The applicant submitted documentation that establishes his residence in the United States prior to January 1, 1982. In addition, the totality of the evidence demonstrates the applicant's residence in the United States from 1985 until the end of the requisite period. However, the applicant's documentary evidence fails to demonstrate by a preponderance of the evidence his continuous residence in the United States from January 1, 1982 until 1985. Pursuant to 8 C.F.R. § 245a.2(d)(5), an applicant for temporary resident status has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. Therefore, the applicant has failed to meet his burden of proof in this proceeding.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 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.