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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 06 2011
XSO-87-067-02051

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the director of the California Service Center, based upon the applicant's ineligibility due to a prior criminal conviction. The AAO *sua sponte* reopens the proceeding and withdraws the director's decision dated November 4, 2005.[1] The appeal will be dismissed.

On November 4, 2005, the director of the California Service Center denied the I-687 application, finding the applicant to be ineligible for temporary resident status, on the basis that the applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for violating a law relating to a controlled substance.[2] On appeal, counsel contends that the applicant's successful completion of a diversion program renders him not convicted for federal immigration purposes pursuant to the August 1, 2000, Ninth Circuit Court of Appeals decision, *Lujan-Arrnendaviz* v. INS, 222 F.3d 728 (9th Cir. 2000). Counsel contends that the director erred in finding that the applicant has been convicted of an offense involving a controlled substance, as the term "conviction" is defined by section 101(a)(48)(A) of the Act. Counsel also asserts that the evidence which the applicant previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite period. The applicant has submitted additional evidence on appeal. Counsel requests a *sua sponte* reopening of the case. In response, the AAO has *sua sponte* reopened the director's November 4, 2005 decision. The November 4, 2005 decision of the director will be withdrawn. The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.[3] The adjudication of the applicant's appeal, as it relates to his claim of continuous residence in an unlawful status in the United States since prior to January 1, 1982 and throughout the requisite statutory period, will be dismissed.

Section 212(a)(2) of the Act provides, in pertinent part, that:

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[1] Motions to reopen a proceeding or reconsider a decision on an application for temporary resident status under 245A of the Immigration and Nationality Act, as amended, (Act) are not permitted. The AAO may, however, *sua sponte* reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

[2] On April 19, 1990, the director of the California Service Center denied the I-687 application, finding 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. On April 19, 1991, the director reopened the case, withdrew its prior decision, and, upon reconsideration, denied the I-687 application, again finding 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. On August 8, 2000, the AAO remanded the case for the director to determine the date of the applicant's first entry into the United States, and whether the applicant's subsequent entries into the United States were obtained through misrepresentation. On August 12, 2005, the director reopened the case. On November 1, 2005, the director approved the applicant's I-690, application for waiver of inadmissibility on the basis of fraud and misrepresentation. On November 4, 2005, the director denied the case, on the basis of the applicant having been convicted of crime involving a controlled substance. On January 14, 2011, counsel filed a Form I-694, notice of appeal, requesting that the AAO *sua sponte* reopen the case.

[3] The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

(A) *Conviction of certain crimes.—*

(i) In General.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

is inadmissible.

The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The first issue to be determined in this proceeding is whether the applicant is ineligible for temporary resident status for violating a law relating to a controlled substance. The AAO has reviewed all of the documents in the file, including the criminal records and the statutes under which the applicant was arrested and/or convicted. The record contains court documents that reveal the following criminal history:

- On January 8, 1986, the applicant was charged with a violation of 21657 of the California vehicle code (VC), *Designated Traffic Direction.* On March 10, 1986, the applicant was convicted of the violation, an infraction. (California Traffic Court number [redacted] case number [redacted])

- On December 16, 1986, the applicant was charged with a violation of 21655 of the California vehicle code (VC), *Carpool Lane Violation.* On January 28, 1987, the applicant was convicted of the violation, an infraction. (California Traffic Court number [redacted] case number [redacted].)

- On September 25, 1997, the applicant was charge with violating the California Health and Safety Code (HS) and the California Vehicle Code (VC), as follows: section 11377(a)(HS), *Possession of a Controlled Substance,* section 11364(HS), *Possession of Controlled Substance Paraphernalia,* and section 12500(a)(VC), *Driving While Unlicensed.* On October 23, 1997, the applicant pleaded *nolo contendere* to *Possession*

> *of a Controlled Substance*, a felony, and *Possession of Controlled Substance Papaphernalia*, a misdemeanor. Also on that date, the court dismissed the remaining charge. The judge ordered that judgment be deferred for 18 months. On September 19, 1998, the applicant was sentenced to 2 years probation, 90 days in the county jail, and ordered to pay a fine. On April 14, 2005, pursuant to section 17 of the the California Penal Code, the court granted a record reduction from a felony to a misdemeanor on the applicant's charge of *Possession of a Controlled Substance*. Also on that date, the court ordered, pursuant to section 1203.4 (PC), that the applicant's pleas of *nolo contendere* be set aside and vacated, a plea of not guilty be entered to the charges, and the case be dismissed. (Municipal Court of California, Santa Clara County Judicial District, case number [redacted])

In denying the I-687 application, the director determined that the applicant's plea agreement equated to a criminal conviction for possession of a controlled substance, rendering the applicant ineligible to adjust to temporary resident status. However, the director failed to determine whether the applicant remained convicted for immigration purposes in light of the subsequent state action purporting to erase the original determination of guilt. As the present case arises in the Ninth Circuit, the decision reached in *Lujan* is the controlling precedent. *Matter of Salazar-Regino,* 23 I&N Dec. 223, 227 (BIA 2002).[4]

The Ninth Circuit Court of Appeals stated in *Lujan* that, "if (a) person's crime was a first-time drug offense, involving only simple possession or its equivalent, and the offense has been expunged under a state statute, the expunged offense may not be used as a basis for deportation." *Lujan,* 222 F.3d at 738.

Lujan holds that the definition of "conviction" at section 101(a)(48) of the Act does not repeal the Federal First Offender Act (FFOA), or the rule that no alien may be deported based on an offense that could have been tried under the FFOA, but is instead prosecuted under state law, when the findings are expunged pursuant to a state rehabilitative statute. *Lujan,* 222 F.3d at 749.

The Ninth Circuit *Lujan* decision explained that:

> The [FFOA] is a limited federal rehabilitation statute that permits first-time drug offenders who commit the least serious type of drug offense to avoid the drastic consequences which typically follow a finding of guilt in drug cases. The [FFOA] allows the court to sentence the defendant in a manner that prevents him from suffering *any* disability imposed by law on account of the finding of guilt. Under the [FFOA], the finding of guilt is expunged and no legal consequences may be imposed as a result of the defendant's having

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[4] In cases arising *outside* the Ninth Circuit, a state expungement does not erase the conviction for immigration purposes, even if the alien could have been eligible for Federal First Offender Act (FFOA) treatment. *See Matter of Salazar-Regino, supra; see also Matter of Roldan,* 22 I&N Dec. 512 (BIA 1999) and *Matter of Pickering,* 23 I&N Dec. 621 (BIA 2003).

> committed the offense. The [FFOA's] ameliorative provisions apply for *all* purposes. *Id.* at 735.

To qualify for first offender treatment under federal law, an applicant must show that (1) he or she has been found guilty of simple possession of a controlled substance; (2) he or she has not, prior to the commission of the offense, been convicted of violating a federal or state law relating to controlled substances; (3) he or she has not previously been accorded first offender treatment under any law; and (4) the court has entered an order pursuant to a state rehabilitative statute, under which the criminal proceedings have been deferred pending successful completion of probation, or the proceedings have been or will be dismissed after probation. *Cardenas-Uriate v. INS*, 227 F.3d 1132, 1136 (9th Cir. 2000).

In *Garberding v. INS*, 30 F.3d 1187(9th Cir. 1994), the Ninth Circuit rejected, on equal protection grounds, the rule that only expungements under exact state counterparts to the FFOA could be given effect in deportation proceedings. "[U]nder *Garberding*, persons who received the benefit of a state expungement law were *not* subject to deportation as long as they *could* have received the benefit of the [FFOA] if they had been prosecuted under federal law." *Lujan*, 222 F.3d at 738 (citing *Garberding*, 30 F.3d at 1190).

Lujan further explained that rehabilitative laws included "vacatur" or "set-aside" laws -- where a formal judgment of conviction is entered after a finding of guilt, but then erased after the defendant has served a period of probation or imprisonment. In addition, rehabilitative laws included "deferred adjudication" laws -- where no formal judgment of conviction or guilt is entered. *See Lujan*, 222 F.3d at 735. The Ninth Circuit then re-emphasized that determining eligibility for FFOA relief was not based on whether the particular state law at issue utilized a process identical to that used under the federal government's scheme, but rather by whether the petitioner would have been eligible for relief under the federal law, and in fact received relief under a state law. *See Lujan*, 222 F.3d at 738.

The rule set forth in *Lujan*, regarding first-time simple possession of a controlled substance offense, is applicable only in the Ninth Circuit, and is a *limited* exception to the generally recognized rule that an expunged conviction qualifies as a "conviction" under the Act. The Ninth Circuit continues to hold that "persons found guilty of a drug offense who could *not* have received the benefit of the [FFOA] [are] not entitled to receive favorable immigration treatment, even if they qualified for such treatment under state law." *Lujan*, 222 F.3d at 738 (citing *Paredes-Urrestarazu v.INS*, 36 F.3d 801, 812 (9th Cir. 1994)). Moreover, in *Ramirez-Castro v. INS*, 287 F.3d 1172 (9th Cir. 2002), the Ninth Circuit further clarified that California Penal Code section 1203.4 provides a limited expungement even under state law, and that it is reasonable to conclude that, in general, a conviction expunged under that provision remains a conviction for purposes of federal law. *Ramirez-Castro*, 287 F.3d at 1175. Furthermore, the holding set forth in the Ninth Circuit case, *Garcia-Gonzales v. INS*, 344 F.2d 804 (9th Cir.1965) remains applicable to expungement cases that do not fit the limited circumstances set forth in *Lujan*.

In deciding whether a criminal conviction expunged pursuant to section 1203.4 of the California

Penal Code remained a "conviction" for immigration purposes, the Ninth Circuit in *Garcia-Gonzales* analyzed Congress' intent in enacting section 241(a)(11) of the Act as in effect in 1965, 8 U.S.C. § 1251(a)(11). *See Garcia-Gonzales*, 344 F.2d at 806-7. Under former section 241(a)(11) of the Act, an alien in the United States was deportable if the alien:

> at any time has been convicted of a violation of any law or regulation relating to the illicit traffic in narcotic drugs, or who has been convicted of a violation of. . .any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation of . . . heroin. 8 U.S.C. § 125 l(a)(11)(1965).

The Ninth Circuit in *Garcia* stated that in enacting section 241 of the Act as in effect in 1965, Congress intended to do its own defining of 'conviction' rather than leave the matter to variable state statutes." *Id.* at 807 (citing *Arrellano-Flores v. Hoy*, 262 F.2d 667 (9th Cir. 1958)). The Ninth Circuit agreed that:

> Congress did not intend that aliens convicted of narcotic violations should escape deportation because, as in California, the State affords a procedure authorizing a technical erasure of the conviction. Traffic in narcotics has been a continuing and serious Federal concern. Congress has progressively strengthened the deportation laws dealing with aliens involved in such traffic. . . . In the face of this clear national policy, I do not believe that the term "convicted" may be regarded as flexible enough to permit an alien to take advantage of a technical "expunge[ment]" which is the product of a state procedure wherein the merits of the conviction and its validity have no place . . . . I, therefore, regard it as immaterial for the purposes of § 241(a)(11) [of the Act] that the record of conviction has been cancelled by a state process such as is provided by § 1203.4 of the California Penal Code . . . . *Garcia-Gonzales*, 344 F.2d at 809 (quoting *Matter of A-F-*, 8 I&N Dec. 429,445-46 (AG 1959)).

Lujan discussed *Matter of A -F-*, stating that the case "remained the rule for all drug offenses until 1970, when Congress adopted the Federal First Offender Act . . . a rehabilitation statute that applies exclusively to first-time drug offenders who are guilty only of simple possession." *Lujan*, 222 F.3d at 735. Thus, while *Lujan* supercedes *Garcia* in limited circumstances, the general holding that expungements do not erase "convictions" for federal immigration purposes remains valid, even in the Ninth Circuit.

In the present case, the applicant has established that he would have qualified for treatment under the FFOA. The applicant entered a plea agreement for a deferred entry of judgment on October 23, 1997 in the Municipal Court of California, Santa Clara County, for a violation of section 11377(a)(HS), *Possession of a Controlled Substance (Methamphetamine)*, a felony, and a

violation of section 11364 (HS), *Possession of Controlled Substance Paraphernalia*, a misdemeanor. The applicant successfully completed his diversion program. On April 14, 2005, pursuant to the California Penal Code, the court granted a record reduction from a felony to a misdemeanor on the applicant's charge of *Possession of a Controlled Substance*, pursuant to 17(PC). Also on that date, the court ordered that the applicant's pleas of *nolo contendere* be set aside and vacated, a plea of not guilty be entered to the charges, and the case be dismissed pursuant to section 1203.4 (PC) of the California Penal Code. The evidence in the record shows that the applicant was not, prior to the commission of the offense, convicted of violating a federal or state law relating to controlled substances and that he was not previously accorded first offender treatment under any law.

The applicant has established that he is not "convicted" for immigration purposes. Consequently, the applicant is not inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for violating a law relating to a controlled substance, and is not ineligible for temporary resident status on this basis. Therefore, since the applicant must be considered to have overcome the particular basis of denial put forth by the director, the director's decision of November 4, 2005 is withdrawn.

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The AAO must next determine whether the applicant has established his continuous residence in the United States throughout the requisite statutory period. 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, which in this case is through July 22, 1987. 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).

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 periods, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

The "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.* 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho,* 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status through July 22, 1987. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote the witness statements in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after July 22, 1987; however, because evidence of residence after July 22, 1987 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains witness statement from [redacted] and a joint statement from [redacted] (the applicant's sister). The witness statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

The applicant has submitted an Airborne Express receipt dated August 28, 1981, addressed to [redacted] in San Jacinta, California. The applicant has also submitted a receipt from Bank of America dated November 3, 1983, in the name [redacted] In addition, the record contains a 1985 W-2 Form listing [redacted] as the employee. The record also contains two training certificates, a letter of appreciation, a GED (General Educational Development) degree and a letter from a bill collector, all dated in 1986, and all in the name of either [redacted] or [redacted] Further, the applicant has submitted employment verification letters from two representatives of Rucker & Kolls, Inc. in San Jose, California, [redacted] manufacturing supervisor, and [redacted] president, respectively. The witnesses state that [redacted] worked for the company as an assembler from March 1988 through the end of the requisite statutory period.

The AAO finds that the applicant has not established he used an assumed name or alias. The regulation at 8 C.F.R. § 245a.2(d) states in pertinent part that:

> (2) *Assumed names* - (i) *General.* In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name . . . .The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirements of this paragraph documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant.
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> (ii) *Proof of common identity.* The most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be

> considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to affiant under the assumed name in question will carry greater weight.

The documents which the applicant submits in the name of either [redacted] fail to establish these names as an alias or assumed name because they do not comply with the above cited regulation. For instance, the applicant has not submitted any documents issued in either of the assumed names which identify the applicant by photograph, fingerprint or detailed physical description. In addition, the applicant has not submitted a statement of any witness with knowledge of the applicant's use of either of the assumed names. Further, in the I-687 application at question 4, the applicant denies ever having used any alias or assumed name. For these reasons, the applicant has failed to establish that he used the name [redacted] as an assumed name or alias, and any documents in that name will be given no weight.

The applicant has submitted a dental form dated June 7, 1982. The applicant has also submitted copies of several pages of his Mexican passport number 22108. Page 2 of the passport reveals that the applicant obtained the passport in Jalisco, Mexico on April 16, 1982. Page 31 contains a single-entry visitor's visa which the applicant obtained in Guadalajara, Mexico on December 9, 1982. Page 30 contains a United States entry stamp dated December 17, 1982. The dental form and the United States entry stamp are some evidence in support of the applicant's presence in the United States for some part of 1982.

The record contains a copy of page 29 of the applicant's Mexican passport number 22108, which contains a single-entry visitor's visa which the applicant obtained in Guadalajara, Mexico on June 29, 1983, and a San Ysidro entry stamp dated 1983. The San Ysidro entry stamp is some evidence in support of the applicant's presence in the United States for some part of 1983.

The record contains a copy of page 27 of the applicant's Mexican passport number 22108, which contains a multiple-entry visitor's visa which the applicant obtained in Guadalajara, Mexico on July 2, 1984. The record also contains a copy of page 26 of the applicant's Mexican passport number 22108, which contains a San Ysidro entry stamp dated July 7, 1984. The San Ysidro entry stamp is some evidence in support of the applicant's presence in the United States for some part of 1984.

The applicant has submitted copies of a 1985 California identification card and a California driver's license, dated September 24, 1985 and November 8, 1985, respectively. These documents are some evidence in support of the applicant's residence in the United States for some part of 1985.

The record contains a copy of a money order receipt dated 1986. However, the name on the receipt is not legible, and the receipt fails to otherwise provide any information that would serve to

link it to the applicant, such as his address. Therefore this document will be given no weight. The record contains a copy of a Selective Service System acknowledgement letter dated January 10, 1986. This document is some evidence in support of the applicant's residence in the United States for some part of 1986.

The applicant has submitted a portion of an airline ticket issued in California on February 2, 1987. However, this airline ticket fails to provide any information that would serve to link it to the applicant, such as his name and address. Therefore this document will be given no weight. The applicant has also submitted money order receipts dated January 24, 1987 and February 23, 1987, respectively. The applicant has also submitted a savings account statement dated June 30, 1987, from Bank of America in San Jose. The money order receipts and bank statement are some evidence in support of the applicant's residence in the United States for some part of 1987.

While some of the above documents indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish the applicant's continuous residence for the duration of the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements and the I-687 application. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the date of his absences from the United States during the requisite statutory period.

At the time of filing the I-687 application, the applicant listed residences in California from June 1981 through the end of the requisite period. The applicant listed employment in California during the requisite statutory period, from August 1985 to November 1985, and from June 1986 through the end of the requisite period. The applicant listed absences from the United States from November to December 1983, from June to July 1984 and from May to June 1985. However, the applicant's statement of his absences in the I-687 application is inconsistent with the information contained in the applicant's passport number 22108, which reveals that the applicant was in Mexico in 1982 and in June 1983. Page 2 of the passport reveals that the applicant obtained the passport in Jalisco, Mexico on April 16, 1982. Page 31 contains a single-entry visitor's visa which the applicant obtained in Guadalajara, Mexico on December 9, 1982. Page 30 contains a United States entry stamp dated December 17, 1982.[5] Further, page 29 of the passport reveals that the applicant was in Guadalajara, Mexico on June 29, 1983 to obtain a visitor's visa

At the time of the applicant's interview on August 7, 1987, the applicant amended the listing of his absences to include an absence from the United States in 1982, and an additional absence from the United States in 1983.

[5]According to this version of the applicant's testimony, he was outside the United States for at least 245 days during the requisite statutory period, from at least April 16, 1982 to December 17, 1982, and is thus ineligible for the benefit. An applicant may not have been absent for more than 45 days in a single period in order to maintain his continuous residence, unless he establishes that his prolonged absence was due to an emergent reason. 8 C.F.R. § 245a.2(h)(1)(i).

In a statement received from the applicant on March 4, 1988, the applicant stated that he had two additional absences from the United States not listed in the I-687 application, both in 1982.

The applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the dates that the applicant was absent from the United States during the requisite period are material to the applicant's claim, in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho,* 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO finds that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The witness statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

Based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.