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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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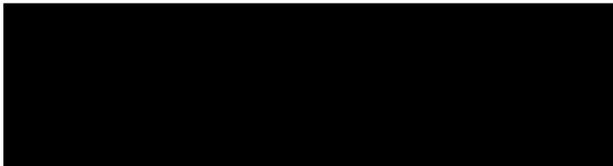


IN RE: Applicant:



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.

Perry Rhew
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 Director, New York. The director subsequently reopened the proceeding.¹ The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO found that that the director's basis for denial of the applicant's Form I-687 was in error. However, the AAO identified alternative grounds for denial of the application. Specifically, the AAO noted that the applicant failed to submit sufficient evidence in support of his application.

On November 18, 2011, the AAO sent the applicant a notice informing the applicant of the deficiencies in his application and providing the applicant with an opportunity to submit additional evidence to establish that he entered the United States before January 1, 1982, and that he continuously resided in the United States in an unlawful status since such date for the duration of the requisite period. The applicant responded to the AAO's request.

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.

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 245(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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days, and the aggregate

¹ On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. See, *CSS v. Michael Chertoff*, Case 2:86-cv-01343-LKK-JFM.

of all absences has not exceeded one hundred eighty (180) days during the requisite period, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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).

It is also noted that you filed a Form I-687 application pursuant to the terms of the Northwest Immigrant Rights Project Settlement Agreements (NWIRP) on June 19, 2009 which was denied on December 14,

2009. This denial was not appealed, however, the affidavits and other evidence submitted with the application will be considered.

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 throughout the requisite period. To establish his entry and residency in the United States during the requisite period, the applicant submitted affidavits, employment letters and other evidence. Evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, and shall not be discussed.

The applicant claimed in his affidavit dated June 17, 2009 that he first entered the United States in September 1981 using a non-immigrant visitor visa obtained at the United States Consulate, Dhaka, Bangladesh in July 1981 and has lived continuously in the United States since that date. The applicant states that he was legally authorized to remain in the United States until December 1981. On the applicant's class membership determination form, he claimed that he first entered the United States in September 1981 with a shore pass.

In response to the AAO's notice, counsel states that the applicant claimed in his affidavit that he first entered the United States in September 1981 using a nonimmigrant visitor visa and that witnesses who submitted affidavits support that this was the time and manner of the applicant's first entry. Counsel states that the paralegal in completing the forms in 2005 made an innocent error and that the applicant due to his lack of English language skills could not verify what the paralegal wrote on his application and signed the I-687 as instructed by the paralegal. However, a number of affiants state in their declarations that the applicant entered the United States the first time by boat through the Canadian border. Additionally, the applicant claimed on his class membership determination form, not his Form I-687, that he first entered the United States in September 1981 with a shore pass. No evidence of record resolves these inconsistencies as to the manner of the applicant's entry. 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 petitioner submits competent 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal the applicant submitted copies of money receipts received during the requisite period but there is no way of identifying the receipts to the applicant as they have no identifying data such as the applicant's full name and address. Therefore, this cannot be considered as evidence of the applicant's continuous residence throughout the requisite period.

The record contains a letter from [REDACTED], and signed by the [REDACTED], stating that the applicant worked for the company for 12 years from 1982. The record contains two affidavits from [REDACTED] stating that the applicant did some work for him between 1982 and 1990. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's

[REDACTED]

duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The letter does not state the applicant's address during the time he worked for the employer, the applicant's duties, layoffs, and state where the information was taken from, and therefore, will be given nominal weight.

The applicant provided a letter from the Islamic Council of America, Inc., signed by [REDACTED] which states that he has known the applicant since 1981 and that the applicant used to come to the religious mosque every Friday for prayer. Although the applicant claims to be affiliated with this organization, he has not indicated on his Form I-687 application (CSS/Newman) the dates of his membership. The applicant also provided a letter from the [REDACTED] (USA) Inc., New York, signed by Burhan Uddin, president, which states that the applicant is a member and volunteered in many cultural and ceremonial events since 1984. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letters do not state the dates of membership and the address where the applicant resided during membership, and therefore, will be given only nominal weight.

Counsel also states in his response that the AAO's notice discredits the affidavits without discussing the reasons for not accepting them. The applicant claims on his Form I-687 application (CSS/Newman) that he resided in the United States from September 1981 to December 1990. The applicant submitted, as proof of his asserted date of entry into the United States and continuous residence in the United States during the requisite period, witness statements from his mother, Sayemun Nessa, his father, [REDACTED]

[REDACTED] who state that they have known you for all or part of the requisite period. Counsel submits additional affidavits from [REDACTED] with the response.

The affidavit from [REDACTED] provided his name, place and date of birth, current address and telephone number in the United States and attests to being the applicant's uncle and knowing the applicant all of his life. The affiant does not state when he came to the United States and where he resided during the requisite period but attests to the applicant's entry and continuous residence and physical presence in the United States since September 1981. The affiant claims the applicant visited his residence often but does not tell the frequency of these visits and the occasion or circumstances surrounding the visits. The affiant also states the different addresses the applicant resided in the United States during the requisite period but does not explain how he obtained such information. The affiant attests to the applicant's good moral character rather than his relationship with the applicant during the requisite period. The affidavit will be given nominal weight.

The affidavit from [REDACTED] provided his name, place and date of birth, current address and telephone number in the United States and attests to being the applicant's friend and being introduced to the applicant by a friend on November 1981. The affiant does not state when he came to the United States and where he resided during the requisite period but attests to the applicant's continuous residence and physical presence in the United States since 1981. The affiant claims they often met each other for lunch or coffee and that they often visited each other's residences. The affiant names the different companies the applicant worked at during the requisite period and states that he occasionally visited the applicant at his work place. The affiant does not indicate how he dates his initial acquaintance with the applicant. The affiant does not state the frequency of his visits to the applicant's residence and work. The affiant attests to the applicant's good moral character rather than his relationship with the applicant during the requisite period. The affidavit will be given nominal weight.

The affidavit from [REDACTED] provided his name, current address, and telephone number in the United States and attests to knowing the applicant since 1987. The affiant does not state where he met the applicant and the circumstances surrounding their meeting. The affiant does not state when he came to the United States and where he resided during the requisite period but attests to knowing the applicant for a long time. The affiant states the applicant's current address in the United States but does state where the applicant resided in the United States in 1987 when he claimed to have met the applicant. The affiant attests to the applicant's good moral character rather than his relationship with the applicant during the requisite period. The affidavit can be given nominal weight.

The affidavit from [REDACTED] provided his name, place and date of birth, current address and telephone number in the United States and attests to being the applicant's friend and knowing the applicant and being introduced to the applicant by a friend but he does not state where and when he met the applicant. The affiant does not state when he came to the United States, and states that the applicant told him that he came to the United States in 1981. Therefore, the affiant does not have personal knowledge of when the applicant first entered the United States. The affiant claims they often met each other for lunch or coffee and that they often visited each other's residences. The affiant lists the different addresses the applicant lived in the United States during the requisite period but does not explain how he obtained such information. The affiant states the name and address of the different employers the applicant worked for in the United States. The affiant attests to the applicant's good moral character rather than his relationship with the applicant during the requisite period. The affidavit was not dated, sworn to or signed by the affiant. The affidavit can be given nominal weight.

The affidavit from [REDACTED] provided his name, place and date of birth, current address and telephone number in the United States and attests to being the applicant's friend and meeting the applicant at a social function in the Bronx in September 1981. [REDACTED] failed to indicate how he dates his initial acquaintance with the applicant. The affiant states that he has been living in the United States since December 22, 1976. The affiant attests that the applicant told him that he came to the United States as a visitor in September 1981. Therefore, the affiant does not have personal knowledge of when the applicant first entered the United States. The affiant claims the applicant visited his residence often but does not say how frequently he visited. The affiant also states that he keeps in touch with the applicant but does not explain the frequency and how they kept in touch. The

affiant also states that the applicant used to work in various construction firms but does not give any of the employers' names and addresses. The affidavit will be given nominal weight.

The affidavit from [REDACTED] provided his name, place and date of birth, current address and telephone number in the United States and attests to picking up the applicant at the JFK airport in September 1981. The affiant states that he has been living in the United States since the early 80s. The affiant claims the applicant visited his residence occasionally but does not tell the frequency of these visits and the circumstances surrounding the visits. The affiant states that on or about December 12, 1987, the applicant's legalization application was not accepted because of his short absence from the United States. The affiant does not state how he gained personal knowledge of this information. The affidavit will be given nominal weight.

The affidavit from [REDACTED] provided his name, date of birth, current address and telephone number in the United States and attests to residing in the United States since October 3, 1980, knowing the applicant and being introduced to the applicant by a friend in a coffee shop in the Bronx in September 1981. The affiant states that he was told the applicant came to the United States as a visitor. Therefore, the affiant does not have personal knowledge of the date and when the applicant first entered the United States. The affiant states that on or about December 12, 1987, the applicant's legalization application was not accepted because of his short absence from the United States. The affiant does not state how he gained personal knowledge of this information. The affidavit will be given some weight.

The affidavit from [REDACTED] provided his name, place and date of birth, current address and telephone number in the United States and attests to being the applicant's friend and meeting the applicant in one of his friend's house on or about September 1981. The affiant states that he has been living in the United States since June 1973. The affiant states that they use to meet after work in the Bronx at a restaurant. The affiant does not tell the frequency of these meetings and the occasion or circumstances surrounding the visits. The affiant states that the applicant told him that on or about December 12, 1987, his legalization application was not accepted because of his short absence from the United States. The affidavit will be given nominal weight.

The affidavit from [REDACTED] provided his name, date of birth, current address and telephone number in the United States and attests to being the applicant's friend and knowing the applicant came to the United States as a visitor and has been residing continuously in Bronx, New York since September 1981. The affiant states that he has been living in the United States since 1981. The affiant claims they meet at parties, religious functions and community programs and that they visited each other's homes. The affiant does not tell the frequency of these meetings and how often they visited each other. The affidavit will be given nominal weight.

The applicant's uncles, [REDACTED] attest to the applicant residing in the United States since 1981 and working as a construction laborer in various construction firms but do not state where the applicant worked. In his affidavit M. [REDACTED] provided his name, place and date of birth, current address and telephone number in the United States and attests to residing in the United States from July 15, 1984. The affiant states that on December 12, 1987, the applicant came to his residence and told him that his legalization

application was not accepted because of his short absence from the United States. The affiant lists the different addresses the applicant lived in the United States during the requisite period but he only attests to the applicant's residence from July 15, 1984 and onwards. The affiant states he has personal knowledge of the applicant working as a construction laborer but does not state how he obtained this knowledge. The affiant attests to the applicant's good moral character rather than his relationship with the applicant during the requisite period. The affidavit will be given nominal weight.

The affidavit from [REDACTED] provided his name, place and date of birth, current address and telephone number in the United States and attests to the applicant calling him and stating that he came to the United States as a visitor in September 1981. The affiant does not state when he came to the United States and where he resided during the requisite period. The affiant states that on December 12, 1987, he saw the applicant in front of Federal Plaza and when he asked him what was wrong he replied that his legalization application was not accepted because of his short absence from the United States. The affiant lists the different addresses the applicant lived in the United States during the requisite period. The affiant attests to the applicant's good moral character rather than his relationship with the applicant during the requisite period. The affidavit will be given nominal weight.

The affidavit from [REDACTED] provided his name, current address and telephone number in the United States and attests to being the applicant's friend and residing in the United States since 1977. The affiant attests to knowing the applicant since September 1981 and meeting him at [REDACTED] New York, on the same date. The affiant states that the applicant told him he just came from Bangladesh with a visitor's visa. Therefore, the affiant does not have personal knowledge of the applicant's first date of entry. The affiant claims they often visited each other's residences but does not tell the frequency of these visits or the circumstances surrounding the visits. The affiant lists the different addresses the applicant lived in the United States during the requisite period but does not explain how he obtained such information. The affiant states he has personal knowledge of the applicant working as a construction laborer and that he used to visit him occasionally at his work places. The affiant does not state how often he visited the applicant at his work place and the circumstances surrounding these meetings. The affiant attests to the applicant's good moral character rather than his relationship with the applicant during the requisite period. The affidavit will be given nominal weight.

The affidavit from [REDACTED] provided his name, place and date of birth, current address and telephone number in the United States and attests to living in the United States since 1977. The affiant states that the applicant came to his residence in September 1981 but does not indicate how he dates his initial acquaintance. The affiant also states he has personal knowledge of the applicant working as a construction laborer. The affiant states that on December 12, 1987, the applicant came to his residence and told him that his legalization application was not accepted because of his short absence from the United States.

The affiant attests to the applicant's good moral character rather than his relationship with the applicant during the requisite period. The affidavit will be given nominal weight.

The witness statements from the applicant's mother, [REDACTED] the applicant's father [REDACTED], are fill-in-the-blanks declarations. The applicant's parents state in their declarations that they live in Bangladesh and the applicant entered the United States for the first time by boat through the Canadian border. The declarants do not give any other information about the applicant.

[REDACTED] states he met the applicant in Bangladesh in 1978 but does not give any other information about the applicant and states that he came to the United States on June 17, 1990.

[REDACTED] states that he first met the applicant on the street in February 1982 but does not state how he dates his initial acquaintance. He also states that the applicant entered the United States for the first time by boat through the Canadian border. The affiant does not give any other information about the applicant and states that he came to the United States in August 1981.

[REDACTED] states that he first met the applicant at his home in the Bronx in 1987. He also states that the applicant entered the United States for the first time by boat through the Canadian border. The affiant does not give any other information about the applicant and fails to state how he knows the date of the applicant's entry or dates of the applicant's residence in the United States.

[REDACTED] states that he first met the applicant at his work place in Brooklyn in 1983. He also states that the applicant entered the United States for the first time by boat through the Canadian border. The affiant does not give any other information about the applicant and states that he came to the United States in November 1979.

[REDACTED] states that he first met the applicant in Brooklyn in 1981. He also states that the applicant entered the United States for the first time by boat through the Canadian border. The affiant does not give any other information about the applicant and states that he came to the United States before 1982.

[REDACTED] states that he first met the applicant at his home in September 1981. He also states that the applicant entered the United States for the first time by boat through the Canadian border. The affiant does not give any other information about the applicant and states that he came to the United States in 1973.

[REDACTED] states that he first met the applicant when he came to his office after doing a job in his building in April 1982. He also states that the applicant entered the United States for the first time by boat through the Canadian border. The affiant does not give any other information about the applicant and states that he came to the United States in June 1956. In another affidavit dated November 8, 2004, the affiant stated that the applicant did some construction work at his building between 1982 and 1995.

[REDACTED] states that he first met the applicant through a mutual friend in November 1981. He also states that the applicant entered the United States for the first time by boat through the Canadian border. The affiant does not give any other information about the applicant and states that he came to the United States on October 14, 1971. In an affidavit dated October 10, 1992, [REDACTED] stated that he has personal

knowledge that the applicant resided in New York from September 1981. In another affidavit dated October 23, 2004, [REDACTED] restates the same information and adds that the applicant did some construction work at the building he lived at between 1982 and 1990 and afterwards.

[REDACTED] states that he first met the applicant at his work place in Brooklyn in February 1981. He also states that the applicant entered the United States for the first time by boat through the Canadian border. The affiant does not give any other information about the applicant.

Additional affidavits were submitted by [REDACTED] who attest to first meeting the applicant during 1981 or 1982, the applicant entering the United States without inspection in September 1981 and traveled outside the United States from July 7, 1987 to August 10, 1987 and re-entered the United States without inspection through the Canadian border. This information conflicts with the information given by the applicant in regards to his first entry as stated in his affidavit dated June 17, 2009 and the information given by the affiants in their declarations. The applicant claimed in his affidavit dated June 17, 2009 that he first entered the United States in September 1981 using a non-immigrant visitor visa obtained at the United States Consulate, Dhaka, Bangladesh in July 1981 and the affiants claim the applicant entered the United States without inspection in September 1981. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho, supra.*

The affidavits submitted by the applicant are judged according to their probative value and credibility and not the quantity of affidavits submitted by the applicant. 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. The AAO finds that the witness statements do not provide sufficient details and in some instances are contradictory to other affidavits/declarations in the record. In many of the affidavits which are noted, the affiants did not sufficiently explain the facts stated in their affidavits/declarations and in some instances, the affiants did not explain how they gained the information about the stated facts. For the aforementioned reasons, the AAO finds that the witness statements do not indicate that their assertions are probably true.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documents cannot be deemed approvable if considerable periods of claimed continuous residency rely entirely on affidavits which are considerably lacking in certain basic and necessary information. The affiants statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. Overall, the affidavits provided are deficient in detail that they can only be given nominal probative value. USCIS is not required to contact affiants to verify the veracity of the testimony and to obtain additional evidence from the affiants. An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5).

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 evidence currently in the record is insufficient to establish the applicant's claim that he maintained continuous residence in the United States throughout the statutory period.

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.