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

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: AUG 07 2008

MSC-06-084-14418

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.

for Michael T. Kelley
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, Los Angeles. 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, on December 23, 2005 (together, the I-687 Application). The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period, specifically noting inconsistencies between the applicant's testimony and the record of proceeding and between documents within the record of proceeding. The director denied the application as the applicant had not met her 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, counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A, a brief, and a declaration from the applicant. In his appeal brief counsel makes reference to paragraph 7 of the CSS settlement agreement and argues that "if the Service had a reason to doubt [the applicant's] qualification as a CSS class member, it had to first issue a notice of intent to deny, informing [the applicant] of its intentions to deny [the applicant's] class membership." Counsel also argues that the applicant's due process rights were violated because the director did not issue a NOID. Finally, counsel argues that any inconsistencies in the record of proceeding "were due to the harsh manner" in which the applicant was interviewed and her "extreme nervousness." As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered before 1982 and continuously resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on December 23, 2005. 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 listed her first address in the United States as [redacted] Los Angeles, California, from 1979 to 1982. At part #33, she listed her first employer as [redacted] from 1980 to 1986. At part #32, the applicant listed two absences from the United States. The applicant visited Guatemala from August 1987 to September 1987 and from December 1988 to January 1989.

The applicant has provided several letters and affidavits; a copy of the applicant's birth certificate; a copy of the applicant's passport with an entry date stamp of January 21, 1989; a copy of the applicant's B-2 visa issued on December 15, 1989; and copies of the applicant's California identification cards issued on February 4, 1980 and on October 3, 1989. The applicant's birth certificate and passport are evidence of the applicant's identity, but do not demonstrate that she entered before January 1, 1982 and resided in the United States for the requisite period. The record includes the pending I-687 Application as well as a prior Form I-687, dated February 22, 1990.

Some of the evidence submitted indicates that the applicant resided in the United States after April 1989 and is not probative of residence before that date. The following evidence may relate to the requisite period:

- An unnotarized letter from [redacted] dated August 6, 2006. The declarant indicates that she lives in Studio City, California and states that she was introduced to the applicant "by [the declarant's] friend, [redacted] Although the declarant states that she has known the applicant since 1979, the statement does not supply enough details to lend credibility to a 27-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances she met the applicant in 1979, how she dates her initial meeting with the applicant, or how frequently she had contact with the applicant. Also, the letter is not clear as to whether the declarant met the applicant in the United States. Further, the declarant provides no specific information about the applicant's residence and whereabouts. In addition, the letter is not notarized and the declarant did not provide proof of her identity. Given these deficiencies, this letter has minimal probative value in supporting the applicant's claims that she entered the United

States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- An unnotarized letter from [redacted] dated June 7, 2006. The declarant indicates that he lives in Los Angeles, California and states that he has employed the applicant "continuously for the past fourteen years as a housekeeper" in Los Angeles. The declarant includes his business card. Although the declarant indicates that he has employed the applicant since 1992, this employer is not listed in the applicant's Form I-687. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In addition, the letter is not notarized and the declarant did not provide proof of his identity. Given these deficiencies, this letter has minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- An unnotarized letter from [redacted] dated June 5, 2006. The declarant indicates that he lives in Los Angeles, California and states that he was "first introduced to [the applicant] by her sister, [redacted], in 1979." The declarant also states that he employed the applicant as a housekeeper from 1989 to 2001. The declarant states that the applicant "worked 16 hours a week and was paid $160.00 per week for her services." These dates of employment are consistent with the Form I-687 that the applicant submitted on December 23, 2005. However, as the director noted in her decision, these dates are not consistent with the applicant's previous Form I-687 or with another letter from the declarant dated January 29, 1990. In his unnotarized letter dated January 29, 1990, the declarant states that he has known the applicant "for ten years," or since 1980. The declarant also states that he employed the applicant as a housekeeper "on an ad hoc basis" at both his office and home from 1980 through 1986. These employment dates are consistent with the applicant's Form I-687 dated February 22, 1990. On appeal, the applicant states that she worked for [redacted] from 1980 to 1986 and from 1989 to 2001. However, neither counsel nor the applicant explain why [redacted] submitted a second letter that omitted her employment from 1980 to 1986 or why this employment was also omitted in the Form I-687 submitted on December 23, 2005. The AAO notes that counsel did not submit a letter from [redacted] on appeal. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In addition, the letters are not

notarized and the declarant did not provide proof of his identity. Given these deficiencies, these letters have minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- An unnotarized handwritten letter from [redacted] dated June 5, 2006. The letter states that the applicant worked for [redacted] from 1986 to 1989 as a housekeeper. The declarant did not state her name in the letter nor did she sign the letter.[2] In addition, the letter is not notarized and the declarant did not provide proof of her identity. The AAO is unable to determine who actually wrote this letter. Therefore, this letter has no probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

  An unnotarized affidavit from [redacted] dated October 12, 2005. The declarant states that he lives in Los Angeles, California and states that he met the applicant for the first time in Guatemala in 1975, when the applicant married his cousin. The declarant states that since meeting the applicant, he and the applicant "have attended many family reunions together along with family celebrations and holiday festivities." The declarant also states that when the applicant first arrived, he and the applicant "rented an apartment complex together" at [redacted] California. The declarant adds that the applicant resided at the address listed above from January 1982 to May 1988. This address and the dates provided are inconsistent with both of the applicant's Forms I-687 and with a previous affidavit from the declarant. His previous notarized affidavit, dated January 24, 1990, provided addresses for the applicant consistent with the applicant's Forms I-687.[3] Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- An unnotarized affidavit from [redacted] Rivas dated October 12, 2005. The declarant states that she lives in North Hollywood, California and states that she first met the applicant in 1982. The declarant states she and the applicant "were at a family barbecue" and began talking. The declarant also states that she and the applicant "became really

[2] According to the record of proceeding, during the applicant's interview on June 9, 2006, the applicant's counsel, [redacted]., wrote the declarant's name on the letter and the applicant signed [the applicant's] name on the letter attesting that [redacted] wrote the letter.
[3] The AAO notes that one address contains a typographical error, but is otherwise consistent.

good friends and have remained true and loyal friends throughout the years." The declarant adds that the applicant "informed [her] that [the applicant] entered the United States illegally through San Ysidro," but does not state when the applicant first entered the United States. Although the declarant states that she has known the applicant since 1982, the statement does not supply enough details to lend credibility to a 23-year relationship with the applicant. For instance, the declarant does not indicate how she dates her initial meeting with the applicant or how frequently she had contact with the applicant. Further, the declarant provides no specific information about the applicant's residence and whereabouts. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- An unnotarized affidavit from [redacted] dated October 12, 2005. The declarant states that she lives in North Hollywood, California and states that she and the applicant are childhood friends and first met in 1977 in Guatemala. The declarant states she visited the applicant when the applicant first arrived in the United States. The declarant also states that she and the applicant "have remained good friends" and attend "family gatherings, parties and holiday festivities" together. The declarant adds that the applicant "informed [her] that [the applicant] entered the United States illegally through San Ysidro," but does not state when the applicant first entered the United States. Although the declarant states that she has known the applicant since 1977, the statement does not supply enough details to lend credibility to a 28-year relationship with the applicant. For instance, the declarant does not indicate when she met the applicant in the United States or how frequently she had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- An unnotarized affidavit from [redacted] dated October 12, 2005. The declarant states that she lives in Studio City, California and states that she has known the applicant since 1982. The declarant states that she and the applicant worked together at the same place, but does not state where they worked. The declarant does state that she worked for [redacted] from January 1982 to May 1988. However, the applicant does not list [redacted] as an employer in either Form I-687. The declarant also states that she and the applicant attend parties, family reunions, and Sunday mass together. The declarant adds that she and the applicant "celebrate Christmas together" and have "traveled [to] various places." In addition, the declarant states that the applicant "informed [her] that [the applicant] entered the United States illegally through San Ysidro," but does not state when the applicant first entered the United States. Although the declarant states that she has known the applicant since 1977, the statement does not supply enough details to lend credibility to a 23-year relationship with the applicant. For instance, the declarant does not indicate where she met the applicant in the United States, how she dates her initial acquaintance with the applicant in the United States, or how

frequently she had contact with the applicant. Further, the declarant provides no specific information, generated by her contact with the applicant, that would demonstrate the extent of that contact. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- An unnotarized affidavit from [redacted] dated October 12, 2005. The declarant states that he lives in Valley Village, California and states that he has known the applicant since 1981. The declarant states that he met the applicant for the first time in Los Angeles, California at his son's birthday party. The declarant also states that he and the applicant "started talking and immediately became good friends." The declarant states that he and the applicant "have traveled to Las Vegas together to visit [their] families." The declarant adds that he and the applicant would often meet at his house for weekend barbecues and that every year they celebrate the holidays together and "prepare food for the festivities." In addition, the declarant states that the applicant "informed [him] that [the applicant] entered the United States illegally through San Ysidro," but does not state when the applicant first entered the United States. Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. For instance, the declarant does not provide specific information gained by contacts with the applicant that would demonstrate the periods and the extent of those contacts. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- A notarized letter from [redacted] dated January 31, 1990. The declarant indicates that he lives in Los Angeles, California and states that he has personally known the applicant since 1983. The declarant states that the applicant "has lived as a tenant in [his] guesthouse from January 1988 to [the] present" and that she has worked as his housekeeper from January 1988 to the present. The information provided is consistent with the information that the applicant provided in the Form I-687 dated February 22, 1990. However, the employment information is not consistent with the Form I-687 dated December 23, 2005 in which the applicant stated that she worked for [redacted] from 1988 to 1989. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, the declarant does not provide information about how the applicant was paid, if there are any records of payment, or how the declarant dates the applicant's employment. Given these deficiencies, this letter has minimal probative value in

supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

A notarized letter from [redacted] dated February 20, 1990. The declarant states that the applicant worked for her "as a general housekeeper from 1986 to 1988." The declarant also states that the applicant worked on a "full-time (40 hours per week) basis" at [redacted] Hollywood, California. Although this information is consistent with both of the applicant's Forms I-687, the declarant does not provide information about how the applicant was paid, if there are any records of payment, or how the declarant dates the applicant's employment. Given these deficiencies, this letter has minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- A notarized form-letter "Verification of Domicile Affidavit" from [redacted] dated January 27, 1990. The declarant states that he is a tenant living at [redacted] The declarant states that "according to [his] records (and/or) to the best of [his] knowledge" the applicant lived at [redacted] California from 1983 to 1987. Although the declarant states that the applicant lived from 1983 to 1987 at his current address, he does not state where he lived during that time, how he has knowledge of her living at that address, or how he dates the time that she lived there. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

A notarized form-letter "Affidavit of Witness" from [redacted] dated February 8, 1990. The declarant states that he is a movie distributor living in Los Angeles, California. The declarant states that he has personal knowledge that the applicant resided in Los Angeles, California from July 1980 to the present. The declarant also states that he is able to "determine the date of the beginning of his acquaintance with the applicant in the United States" from the fact that the applicant is his "friend and neighbor." The declarant adds that the longest period during the residence described in which he has not seen the applicant is "none." Although the declarant states that he has known the applicant since 1980, the statement does not supply enough details to lend credibility to a 10-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances he met the applicant in 1980, how he dates his initial meeting with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

A copy of the applicant's California identification card issued on February 4, 1980. The AAO notes that the identification card includes an address not listed on either of the

applicant's Forms I-687. This document is evidence of the applicant's presence in the United States beginning on February 4, 1980. However, this document is not probative of residence before or after that date.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which she claims to have entered the United States in 1979 and 1980 without inspection. Prior to the appeal, the applicant's record states that she entered in 1979. On appeal, counsel states that the applicant entered the United States in January 1980 "through Nogales" without inspection and the applicant that she entered the United States in December 1980 "through Nogales, Arizona without inspection." Apart from providing an inconsistent date of first entry counsel and the applicant's statements contradict affidavits in the record of proceeding, as noted above, that state that the applicant "entered the United States illegally through San Ysidro." In addition, on appeal, counsel and the applicant emphasize that the applicant left the United States on two occasions. The applicant states in a notarized affidavit that she was absent from the United States from August 1987 to September 1987 and from December 15, 1988 to January 15, 1989.[4] Although counsel and the applicant's information regarding the applicant's absences from the United States is consistent with both Forms I-687, the information is inconsistent with the applicant's testimony during her June 9, 2006 interview. During the interview, the applicant stated that she had a son in Guatemala on January 26, 1987 and got married in Guatemala on January 21, 1989. These events do not coincide with the absences as previously stated. Finally, the AAO notes that the applicant's Form I-687 dated December 23, 2005 lists [redacted] as an employer, but does not include [redacted] in the Form I-687 dated February 22, 1990. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not submitted any additional evidence in support of her claim that she was physically present or had continuous residence in the United States during the entire requisite period or that she entered the United States in 1981. As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. In this case, her assertions regarding her entry are not supported by any credible evidence in the record.

The director denied the application for temporary residence on June 22, 2006. In denying the application, the director found that the applicant failed to establish that she entered the United States prior to January 1, 1982 or that she met the necessary residency or continuous physical presence requirements. In addition, the director noted inconsistencies between the applicant's testimony and the record of proceeding and between documents within the record of proceeding. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

[4] The AAO notes that the applicant's passport includes a date entry stamp of January 21, 1989.

On appeal, counsel makes reference to paragraph 7 of the CSS settlement agreement and argues that "if the Service had a reason to doubt [the applicant's] qualification as a CSS class member, it had to first issue a notice of intent to deny, informing [the applicant] of its intentions to deny [the applicant's] class membership." Counsel also argues that the applicant's due process rights were violated because the director did not issue a NOID. Although counsel argues that the applicant's rights to procedural due process were violated, he has not shown that any violation of the regulations resulted in "substantial prejudice" to her. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The applicant has fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the applicant's case. Counsel's primary complaint is that the director denied the application without issuing a NOID. As previously discussed, the petitioner has not met her burden of proof and the denial was the proper result under the settlement agreements. According to the settlement agreements, the director shall issue a NOID before denying an application for class membership. Here, however, the director did not deny the application for class membership. Instead, the director, based on the applicant's class membership, adjudicated the application for temporary residence on the merits. As the director did not deny the applicant the benefit of class membership, the director was not required to issue a NOID prior to issuing the final decision in this case. Accordingly, counsel's claim is without merit.

Finally, counsel argues that any inconsistencies in the record of proceeding "were due to the harsh manner" in which the applicant was interviewed and her "extreme nervousness." In her notarized affidavit, the applicant states that all of the information submitted "is true and correct to the best of [her] knowledge." Apart from the applicant's statements during her interview, the record of proceeding contains numerous inconsistencies and contradictions. On appeal, counsel does not provide any independent objective evidence that resolves the inconsistencies in the record.

In his appeal brief counsel states that in the applicant's case, "the evidence more than satisfies the burden of proving eligibility for legalization by a preponderance of the evidence." As noted above, 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. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of her claim. There are numerous discrepancies and inconsistencies in the evidence submitted by the applicant. 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 she 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.