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

PUBLIC COPY

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FILE: [redacted] Office: NEW YORK Date: FEB 27 2008

MSC-05-257-13443

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.,* CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.,* CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, New York. The applicant appealed the decision to the Administrative Appeals Office (AAO). The appeal was rejected by the District Director, New York, because it was found to be untimely filed. The applicant provided the director with additional information indicating the appeal had been timely filed. The director forwarded the appeal to the AAO. The decision is now before the AAO on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the information provided by the applicant was insufficient to overcome the grounds for denial expressed in the Notice of Intent to Deny (NOID). In the NOID, the director had explained that the applicant's two lengthy absences from the United States during the requisite period made her ineligible for temporary resident status, because these absences exceeded the limit of 45 days for a single absence. The director affirmed the reasons for denial set forth in the NOID. Specifically, the director denied the application because the applicant had not demonstrated eligibility for temporary resident status.

On appeal, the applicant stated that additional proof of her presence in the United States during the requisite period had been requested by the director, but the applicant did not understand what additional proof she should provide. The applicant referred to her April 4, 2006 written response to concerns raised by the director regarding her first absence from the United States. The applicant also reiterated her prior written response to concerns regarding her second absence from the United States, indicating that she had been a victim of an individual she had hired to represent her. Lastly, the applicant stated that she had failed to mention her difficult pregnancy in the interview with an immigration officer because she did not know that a detailed response was required at the time.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to

timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-,* 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on June 14, 2005. The applicant signed this form under penalty of perjury, certifying that the information she provided is true and correct. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant reported her only address in the United States during the

requisite period to be at [redacted] Brooklyn, New York from 1981 to 1997. At Part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera, the applicant stated "none." At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed the following absences, to Peru, during the requisite period: December 1982 to February 1983, to give birth; May 1985 to June 1986, to visit; and March 1988 to March 1988, to visit.

According to 8 C.F.R. § 245a.2(h)(1)(i), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, her return to the United States could not be accomplished within the time period allowed. Since the applicant's visit to Peru from May 1985 to June 1986 spanned twelve complete months, it must have exceeded 45 days. If the evidence fails to establish that emergent reasons prevented the applicant from accomplishing her return to the United States within the time period allowed, she will be found not to have resided in the United States continuously throughout the requisite period.

At part #33 of the Form I-687 application, the applicant listed only the following positions during the requisite period: Porter for Allied Cast, from 1981 to 1984; and machine operator for Comint Leather from 1984 to 1995. It is noted that the final page of the applicant's Form I-687 contains the applicant's signature next to the date of June 8, 2005. In addition, beneath the applicant's signature is the signature of an individual identified as [redacted] The address '[redacted] Bronx, New York" is printed beneath this individual's signature and printed name.

The record includes an additional Form I-687 application that was submitted by the applicant to the Immigration and Naturalization Service (INS), presently CIS, on May 15, 1991. This original Form I-687 is inconsistent with the applicant's later filed Form I-687 and the applicant's other written and oral statements. The form appears to have been signed by the applicant under penalty of perjury. At part #48 where the form indicates the person preparing the form should sign, no signature exists. At part #31 of the applicant's earlier filed Form I-687, where applicants were asked to state the number of times he or she had been married the applicant indicated she had been married zero times. Where applicants were asked to list his or her total number of sons and daughters, "0" and "None" appears in red writing. The record tends to indicate the red writing constitutes the written record of the applicant's oral responses to questioning by the immigration officer, as recorded by the officer, during the applicant's interview on July 13, 1990. At part #33 where applicants were asked to list all residences in the United States since first entry, the applicant listed only [redacted] Harrison, New Jersey from March 1981 to present. This information is inconsistent with the information provided on the applicant's current Form I-687, where the applicant failed to indicate she had resided at the [redacted] address during the requisite period. This inconsistency calls into question the applicant's claim to have resided in the United States throughout the requisite period. At part #35 where applicants were asked to list all absences from the United States since entry, the applicant listed only a visit to Peru from July 1987 to August 1987 to Peru, to visit her

family. This is inconsistent with the information on the applicant's current Form I-687, which indicates the applicant took three trips outside of the United States during the requisite period and that none of these trips occurred in 1987. This inconsistency calls into question the applicant's claim to have resided in the United States throughout the requisite period. At part #36 where applicants were asked to list all employment in the United States during the requisite period, the applicant listed the following positions during the requisite period: Cleaning for Allied Services from June 1981 to September 1985; and cleaning for Import Maintenance Co., Inc. from October 1985 to present. Again, this information is inconsistent with the applicant's current Form I-687, where the applicant failed to indicate that she was employed with Allied Services or with Import Maintenance Co., Inc. during the requisite period. This inconsistency calls into question the applicant's claim to have resided in the United States during the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation, much of which does not relate to the requisite period. Documents relating to the requisite period included multiple attestations, together with photocopies of medical documents.

The applicant submitted undated declarations from [redacted], and [redacted] These declarations fail to confirm that the applicant resided in the United States during the requisite period. As a result, these declarations are not relevant to the determination of whether the applicant has established that she meets the residency requirements for temporary resident status.

The record includes an undated and unsigned form affidavit from [redacted] indicating the applicant resided at [redacted] from April 1981 to present. Since this affidavit is undated and uses only the term "present" to indicate the end point of the period of residence to which it attests, this affidavit fails to confirm that the applicant resided in the United States during the requisite period.

The record includes a form affidavit from [redacted] in which the affiant stated that the applicant lived in the affiant's house or apartment at [redacted], Newark, New Jersey from December 5, 1981 to April 26, 1985. This information is inconsistent with both the applicant's current and earlier filed Form I-687 applications, where the applicant failed to indicate she had resided at the [redacted] address during the requisite period. Neither application listed the [redacted] address during the requisite period. This inconsistency calls into question Mr. [redacted] ability to confirm the applicant's residence in the United States during the requisite period.

The record includes a declaration from _____ of the Customer Services Department of [redacted] in Newark, New Jersey dated October 30, 1990. This declaration states that the applicant has been a customer of Bushberg since May 1982. This declaration fails to include sufficient information to confirm that the applicant resided in the United States during the requisite period. Specifically, this declaration does not indicate that the applicant received deliveries from Bushberg at an address in the United States or appeared frequently at the

Newark, New Jersey location. Without this or similar information, the declaration merely indicates that the applicant engaged in a transaction with Bushberg at least one time, in May 1982. This document fails to confirm that the applicant resided in the United States during the requisite period.

The record includes a form affidavit from dated September 29, 1990, which states that the applicant has resided continuously in the United States since 1981. The printed text on the form refers to the applicant as a male, and this text was not corrected by the affiant. The text also indicates the affiant has had a personal friendship with the applicant "during all this time." The affidavit from is lacking in detail regarding the events and circumstances of the applicant's residence in the United States that would tend to lend credibility to her claim that she has direct, personal knowledge of the applicant's residence. The affiant failed to provide any relevant and verifiable information, including where the applicant lived and worked during the requisite period. The lack of detail is significant, considering that the affiant claims to have a friendship with the applicant spanning more than eight years. The affidavit from can only be afforded limited weight as corroborating evidence of the applicant's residence since 1981, due to its lack of detail.

The record contains an undated declaration from , which states that the applicant was under the declarant's care as a gynecology patient from March 1982 to July 1982. The declaration from is lacking in detail that would tend to lend credibility to his claim that the applicant was his patient in the United States during 1982. failed to provide any relevant and verifiable information, including the address where the applicant resided during the requisite period. also failed to explain the origins of the information to which he attested. For example, failed to indicate whether the information was provided from his personal recollection or his review of the applicant's medical records. also failed to specify whether medical records existed for the applicant and whether INS (now CIS) could have access to these records. The declaration from Dr. can only be afforded limited weight as corroborating evidence of the applicant's residence during 1982, due to its lack of detail or supplementary documentation.

The record includes a declaration dated April 11, 1990 from of in Orange, New Jersey. In this declaration, the declarant stated that the applicant is personally known to him since March 1982 and that the applicant has been active in St. John's parish community since then. This information is inconsistent with the applicant's current Form I-687 application, where she failed to list 's parish when asked to list all affiliations and associations. This inconsistency calls into question the declarant's ability to confirm whether the declarant resided in the United States during the requisite period. In addition, the declaration does not conform to regulatory standards for attestations by churches, unions, or other organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not state the address where the applicant resided during the membership period. Due to the inconsistency between this declaration and the current Form I-687, as well as the declaration's failure to conform to relevant regulations, it will be afforded only limited weight in establishing that the applicant resided in the United States from March 1982 to the end of the requisite period.

The record includes an undated letter from [redacted], controller of Interport Maintenance Co., Inc. This letter states that the applicant has been employed "since October 1985 to the present" with Interport Maintenance Co., Inc. The letter is printed on letterhead indicating the employer is located in Elizabeth, New Jersey. Since this letter is undated, it fails to confirm that the applicant resided in the United States at any time other than October 1985. In addition, the letter is inconsistent with the applicant's current Form I-687 where she failed to list Interport Maintenance Co., Inc. when asked to list all employment in the United States. Lastly, the letter does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the letter does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. Due to the inconsistency between the letter and the current Form I-687, as well as the letter's nonconformance to regulations that apply to letters from employers, this letter is afforded only limited weight in establishing that the applicant resided in the United States in October 1985.

The record includes a declaration from [redacted], area manager of Ogden Allied Building Services (Ogden). This declaration states that the applicant was employed with Ogden from June 1981 to September 1985. This declaration is inconsistent with the applicant's current Form I-687 where she failed to list Ogden when asked to list all employment in the United States. In addition, the declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, duties with the company, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. Due to the inconsistency between the declaration and the current Form I-687, as well as the declaration's nonconformance to regulations that apply to letters from employers, this declaration is afforded only limited weight in establishing that the applicant resided in the United States from before January 1, 1985 to September 1985.

The record also includes a receipt from Travelers Express dated December 6, 1981. This receipt lists the applicant's address as [redacted] New Jersey. This address is inconsistent with the information listed on both the applicant's current and earlier submitted Forms I-687, where the applicant did not indicate she lived at [redacted] during December 1981. This inconsistency calls into question the authenticity of the receipt. As a result, this receipt carries negative weight in the evaluation of the applicant's claim to have resided in the United States prior to January 1, 1982.

The record includes copies of immunization records for 1985 to 1996. Several of these copies fail to include the patient's name. This evidence carries no weight in determining whether the applicant has established that she resided in the United States throughout the requisite period. Other copies list the name of the applicant's son, [redacted], as the patient. These copies indicate the patient received immunizations on various dates from 1985 to 1987. These copies are evidence of the applicant's son's presence in the United States. However, these copies carry no weight in determining whether the applicant resided in the United States

continuously throughout the requisite period. It is noted that the applicant indicated in a written statement submitted to CIS on April 4, 2006 that she had left her son in the care of his grandparents in the United States while she visited Peru from December 1982 to August 1983. By making this statement, the applicant admitted that she departed the United States for significant periods while leaving her son under the care of others in the United States. This underlines the fact that evidence of the applicant's son's presence in the United States at a given time does not necessarily indicate that the applicant was also residing in the United States at that time.

The record includes a photocopy of an undated letter addressed to the applicant from the City of New York Police Department. The letter refers to a domestic violence incident occurring in the applicant's home. The date initially listed for the incident appears to have been eradicated and replaced with the date June 15, 1982. This apparent eradication casts doubt on the authenticity of the document. As a result, this document carries extremely limited weight in establishing that the applicant resided in the United States in June 1982.

The record includes a declaration from [redacted], paralegal. In this declaration, Ms. [redacted] indicated she worked for Minita Multiple Service and Travel Agency, and that the applicant and her family members used this service to file their applications for temporary resident status. This declaration fails to confirm that the applicant resided in the United States during the requisite period.

The record includes an affidavit from [redacted]. in which the affiant stated, "for around December 1981," the applicant helped the affiant once per week with maintenance of his house. This information is inconsistent with the current and earlier submitted Forms I-687, where the applicant failed to list employment with [redacted] when asked to list all employment in the United States. In addition, the affidavit does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavit does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. Due to the inconsistencies between the affidavit and the Forms I-687, as well as the letter's nonconformance to regulations that apply to letters from employers, this affidavit is afforded only limited weight in establishing that the applicant resided in the United States prior to January 1, 1982.

The record includes an affidavit from [redacted] In this affidavit, the affiant stated that she met the applicant around December 1981 when she and the applicant were living on the same block. The affiant stated that she and the applicant shared time together on many occasions including parties, holidays, and times in the park. This affidavit fails to specifically confirm that the applicant resided in the United States at any time other than December 1981.

The record includes an affidavit from [redacted] **In this affidavit,** [redacted] stated that the applicant took care of the affiant in her infancy and "when I grew up, after school hours . . . ."

The affiant explained that she was born on May 5, 1983, in Brookly, New York and was living in Brooklyn during her infancy. This affidavit fails to confirm that the applicant resided in the United States at any time other than an unspecified period of time following May 5, 1983. In addition, this affidavit is inconsistent with the applicant's current and earlier filed Form I-687, where the applicant failed to list any child care positions when asked to list all employment in the United States. As a result of this inconsistency, this affidavit carries only limited weight in establishing that the applicant resided in the United States for an unspecified period following May 5, 1983.

On November 15, 2005, the director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID indicates that the applicant had not demonstrated eligibility for temporary resident status. The NOID indicates that the applicant stated in her interview with an immigration officer on March 6, 2006, that she left the United States in December 1982 and did not return until August 1983 after the birth of her daughter. It is noted that this information is inconsistent with the current Form I-687, where the applicant indicated that she was gone from December 1982 until February 1983 instead of until August 1983. This inconsistency calls into question whether the applicant resided in the United States continuously throughout the requisite period. The director explained that the absence from December 1982 to August 1983 exceeded the 45 day limit for a single absence during the requisite period, as explained above in the current decision. The director also stated that the applicant had provided no evidence that her return to the United States could not be accomplished during the allowed period due to emergent reasons, other than that the applicant was having marital problems with the father of her child, Carlos Herrera [Sr.] [redacted] and desired to be away from him. The director explained that a document provided by the applicant at the interview indicated that the applicant married [redacted] on April 27, 1983 in Lima, Peru. The director stated that this document contradicted the applicant's claim to have stayed in Peru beyond the 45 day limit in order to be away from [redacted] The director also noted that the applicant had failed to explain her additional absence during the requisite period that exceeded 45 days, from May 1985 to June 1986.

In response to the NOID, [redacted], LL.B., LL.M, submitted a written statement. This statement is printed on the letterhead of the American Immigration Federation, a nonprofit organization. It is noted that the record includes a Form G-28 Notice of Entry of Appearance as Attorney signed by the applicant and listing [redacted] of the American Immigrant Federation as the applicant's attorney. The statement from [redacted] asserted that the applicant left the United States in December 1982 because she was pregnant, had no legal status, and, as a result, was unable to give birth in the United States. In addition, [redacted]s statement indicated that the applicant was having problems with her husband, who was physically abusive. [redacted] also indicated that the applicant's return to the United States after departing in December 1982 was delayed by her high-risk pregnancy, and that the applicant was cared for by friends and family in Peru because of this high-risk pregnancy. Finally, [redacted] attempted to explain the fact that an additional absence from May 1985 to June 1986 was listed on the applicant's current Form I-687. He indicated that the applicant has not left the United States since August 1983 but was prejudiced by her former

attorney when the former attorney wrote erroneous information on her application. Mr. [redacted] indicated that the applicant had been represented by [redacted], who was later convicted of fraudulent acts. It is noted that, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, the statement of [redacted] is considered only to the extent that it clarifies the applicant's legal argument that she qualifies for temporary resident status, rather than as an assertion of facts.

The applicant submitted a statement signed by herself on April 4, 2006. In this statement, the applicant stated that she entered the United States in November 1981 and lived with the father of her children as husband and wife. She returned to Peru in December 1982 because her husband physically abused her and she was scared that she would lose her unborn child. The applicant's husband traveled to Peru asking for her forgiveness. The applicant married her husband in Peru on April 27, 1983. She stated that it was impossible for her to return to the United States for seven months because her gynecologist, [redacted] cautioned her that her pregnancy could be endangered. The applicant gave birth on July 26, 1983 and she returned to the United States in August 1983. These statements of the applicant are inconsistent with her statements in her interview with the immigration officer on March 6, 2006, where the applicant's only explanation for the delay in her return to the United States was that she desired to be away from her husband. This inconsistency calls into question the applicant's claim that emergent circumstances prevented the applicant from accomplishing her return to the United States within the time period allowed.

In her statement, the applicant also indicated that she began the process of preparing her immigration papers with an attorney named [redacted] who operated out of the address [redacted] in the Bronx, New York. The applicant stated that a lawsuit had been filed against [redacted] for defrauding consumers seeking immigration information. The applicant stated that [redacted] was responsible for all the "mistakes and deceptions" regarding her immigration papers, and that [redacted] had presented himself as a lawyer when he was not actually a lawyer.

It is noted that there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on her behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel). Since the applicant has indicated [redacted] was not authorized to practice immigration law, the claim of ineffective assistance is unavailable to her as applied to the acts of [redacted]

In addition, the applicant has raised no claim of ineffective assistance of counsel with respect to the actions of her former attorney, [redacted] Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved applicant setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the applicant in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Although the applicant has established that the office out of which Mr. [redacted] operated has been associated with a fraud investigation, the applicant has failed to meet the above listed requirements for a claim of ineffective assistance of counsel. Specifically, the applicant has failed to provide a detailed affidavit setting forth the agreement with counsel and the representations made by counsel; evidence that counsel has been informed of her allegations and given an opportunity to respond; and an indication of whether she has filed a disciplinary complaint. Since the applicant has failed to provide the above listed information regarding Mr. Montes, she has not established a claim of ineffective assistance of counsel.

The applicant's signature appears on Forms I-687 submitted on June 14, 2005 and on May 15, 1991. The record indicates that the applicant signed the Forms I-687 under penalty of perjury, and the applicant has not provided the evidence necessary to establish a claim of ineffective assistance of counsel. Therefore, the applicant has failed to provide a reasonable explanation for the inconsistencies appearing in her applications and supporting documents. These inconsistencies cast significant doubt on her claim to have resided in the United States throughout the requisite period.

The applicant also submitted multiple documents in response to the NOID. She submitted a medical certificate indicating that she showed symptoms of "10 weeks pregnancy, threat of abortion, anemic syndrome" and was prescribed absolute medical rest. The certificate indicates assistance with delivery was given on July 26, 1983. This certificate is dated March 24, 2006 and appears to be signed by an individual named The certificate fails to explain the origins of the information to which it attests. pecifically, the certificate fails to explain whether medical records were consulted in the preparation of the certificate and, if so, whether CIS can have access to the records. The lack of explanation of the author's ability to confirm the applicant's medical history after the passage of more than 23 years casts serious doubt on the authenticity of this document. In addition, the applicant's failure to raise pregnancy complications as an explanation for her delayed return to the United States in response to the officer's questions in the immigration interview casts additional doubt on the authenticity of this document and on the applicant's current explanation of her delayed return.

The applicant also provided a handwritten prescription prepared on the prescription pad of [redacted] This prescription does not list the patient's name. In addition, the signature of

does not appear to match the signature on the medical certificate provided. As a result, this prescription carries no weight in establishing that the applicant's timely return to the United States was delayed by pregnancy complications.

The applicant provided a declaration from [redacted] Pastor General of Messiah Christian Community. In this declaration, [redacted] stated that the applicant was a member of the congregation from an early age, although she had a long absence from the church, since January 1983. The declarant stated that the church was trying to give the applicant the "necessary love and support due to her delicate health condition." This declaration fails to confirm the applicant's residence in the United States except for the period prior to 1983. The declaration is also inconsistent with the current Form I-687, where the applicant failed to list the Messiah Christian Community when asked to list all affiliations or associations. Lastly, this declaration does not conform to regulatory standards for attestations by churches, unions, or other organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not show inclusive dates of membership, does not state the address where the applicant resided during the membership period, does not establish how the author knows the applicant, and does not establish the origin of the information being attested to. In addition, this declaration contains only a vague reference to the applicant's "delicate health condition" and, as a result, is insufficiently detailed to serve as corroborative evidence of the applicant's claim that her return to the United States was delayed in 1983 due to pregnancy complications.

The applicant also provided a copy of a news article describing the suit against [redacted] for defrauding immigrants. This article indicates [redacted] operated his immigration legal services business out of an office at [redacted] in the Bronx, New York. It is noted that this address matches the address listed for the applicant's former attorney, [redacted], on her current Form I-687. As stated above, since the applicant has failed to establish a claim of ineffective assistance of counsel this document is not relevant to determining whether she has established that she resided in the United States continuously throughout the requisite period.

In denying the application, the director determined that the information provided by the applicant was insufficient to overcome the grounds for denial expressed in the Notice of Intent to Deny (NOID). In the NOID, the director had explained that the applicant's two lengthy absences from the United States during the requisite period made her ineligible for temporary resident status, because these absences exceeded the limit of 45 days for a single absence. The director indicated that the applicant stated in her response to the NOID that the applicant stayed in Peru during her first absence because of an alleged high-risk pregnancy that prohibited travel. The director mentioned that the applicant's written statements contradict her earlier statements during her interview with an immigration officer, in which the applicant failed to mention that her pregnancy had been at risk and she was prohibited from traveling. Instead, during the interview, the applicant had stated that she had remained in Peru to escape her abusive husband. The director also indicated that, in response to the NOID, the applicant had attempted to explain her second absence from the United States as an error on the part of a former immigration attorney. The director dismissed this explanation, since the applicant had signed her application attesting

that all the information on the form was true and correct. The director affirmed the reasons for denial set forth in the NOID. Specifically, the director denied the application because the applicant had not demonstrated eligibility for temporary resident status.

On appeal, the applicant stated that additional proof of her presence in the United States during the requisite period had been requested by the director, but the applicant did not understand what additional proof she should provide. The applicant referred to her April 4, 2006 written response to concerns raised by the director regarding her first absence from the United States. The applicant also reiterated her prior written response to concerns regarding her second absence from the United States, indicating that she had been a victim of [redacted] who she had hired to represent her. Lastly, the applicant stated that she had failed to mention her difficult pregnancy in the interview with an immigration officer because she did not know a detailed response was required at the time.

The applicant's explanation on appeal of her apparently inconsistent statements regarding her absence from the United States between December 1982 and August 1983 is found to be unreasonable under the circumstances. Specifically, the applicant initially explained that the reason for the delay in her return to the United States involved her relationship with her husband. Currently, the applicant attributes her delay in returning to complications with her pregnancy. These two explanations are unrelated to each other. Therefore, the applicant's characterization of the apparent inconsistency as a mere lack of detail is found to be unreasonable under the circumstances. The applicant has failed to establish that, due to emergent reasons, her return to the United States after her departure in December 1982 could not be accomplished within the time period allowed. Since this absence exceeded 45 days, the applicant is found not to have resided in the United States continuously throughout the requisite period.

In addition, the applicant's explanation of the additional absence listed on Form I-687 from May 1985 to June 1986, is unsatisfactory. As stated above, the applicant has failed to establish a claim of ineffective assistance of counsel. Therefore, the statements on the applicant's Forms I-687 are taken to be her own statements. The applicant has provided no other explanation of the inconsistencies between the current Form I-687 application and her oral statements indicating she did not depart the United States after 1983. These inconsistencies tend to indicate that the applicant was absent from the United States on a visit beginning in May 1985 that exceeded 45 days. The applicant provided no evidence that, due to emergent reasons, her return to the United States from her departure in May 1985 could not be accomplished within the time period allowed. Therefore, the applicant is found not to have resided continuously in the United States during the requisite period.

In summary, the record indicates the applicant departed the United States two times during the requisite period on visits exceeding 45 days. The applicant has failed to submit sufficient credible evidence to overcome her inconsistent statements regarding these departures, or to establish that exigent circumstances delayed her return beyond the required period. In addition, the applicant has provided evidence of her residence in the United States during the requisite

period that fails to confirm that she resided in the United States during the requisite period, is inconsistent with her Form I-687 applications, lacks sufficient detail, fails to conform to regulatory standards, or fails to overcome the applicant's contradictory statements.

The declarations from [redacted] and [redacted] fail to confirm that the applicant resided in the United States during the requisite period. The affidavits from [redacted] and [redacted] and the receipt from Travelers Express are inconsistent with the applicant's Forms I-687. The affidavit from [redacted] and the declaration from [redacted] lack sufficient detail. The declarations from [redacted] and [redacted] the letter from [redacted] and the affidavit from [redacted] are inconsistent with the current Form I-687 and fail to conform to regulatory standards. The applicant's son's immunization records do not confirm that the applicant resided in the United States during the requisite period. The letter from the New York Police Department contains a date that appears to have been eradicated. The documents from [redacted] and from [redacted] fail to overcome the inconsistencies in the applicant's explanation of her delayed return to the United States after the birth of her child.

The absence of sufficiently detailed, consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the contradictions among the applicant's statements on her applications and her supporting documents, the applicant's failure to overcome evidence of two extended absences from the United States, and her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.