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U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] Office: SACRAMENTO

Date: JUL 19 2010

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:

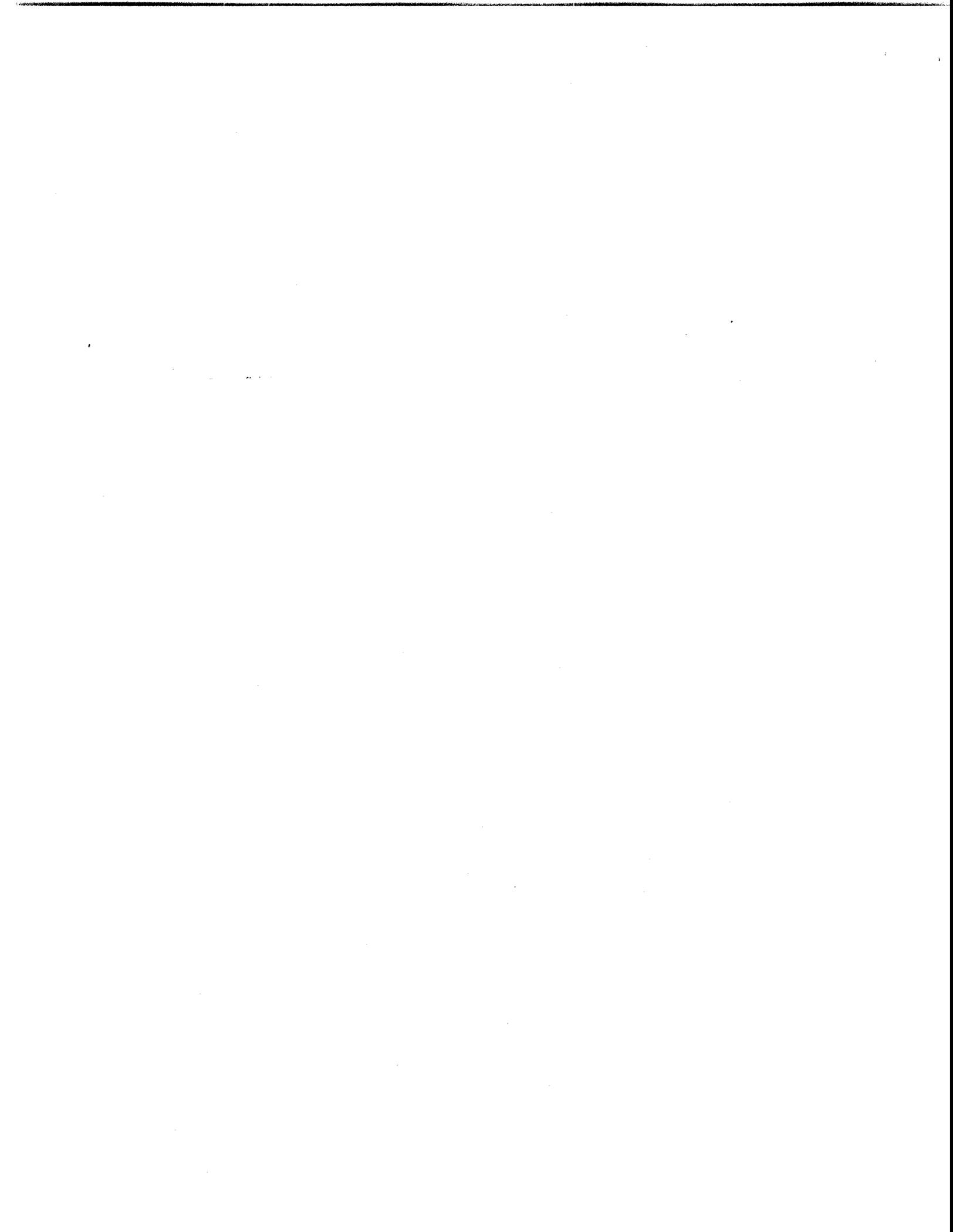
[REDACTED]

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.

[REDACTED]

Chief, Administrative Appeals Office



DISCUSSION: The application for temporary resident status was denied by the director of the Sacramento office, and 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 (LULAC) Class Membership Worksheet. The director denied the application, finding that the applicant was ineligible for adjustment to temporary resident status because he had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite time period.

On appeal, the applicant asserts that the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant has submitted additional evidence on appeal.¹ The AAO has considered the applicant's assertions, 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.²

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 [REDACTED] 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 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

¹The record reflects that the applicant's FOIA request, [REDACTED] was processed on September 25, 2009. The record also reflects that the applicant was forwarded a copy of the record of proceedings by the AAO on February 23, 2005, prior to dismissing the appeal of the denial of his Form I-485, application to adjust to permanent resident status under the LIFE Act.

²The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).



inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has establish that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and documents. The AAO has



reviewed each document in its entirety to determine the applicant's eligibility. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The applicant has submitted the statements from witnesses [REDACTED] and [REDACTED]. The statements are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

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

In addition, in a statement dated July 8, 2002 and in a statement dated July 24, 2004, [REDACTED] states that the applicant lived with him in his home on [REDACTED] California beginning in December 1981.³ However, these statements are inconsistent with the statement of the applicant in the instant I-687 application that he began residing at that address in September 1981. In addition, in a June 18, 2001 statement, the witness states that he has known the applicant in the United States since June 1981. However, in his March 17, 2006 statement the witness says that he first met the applicant in California in November 1981. Due to these inconsistencies, the statements of this witness have minimal probative value.

Further, in an undated statement and in a statement dated July 24, 2004, [REDACTED] states that he has known the applicant since the applicant arrived in the United States in June 1981. However, in a statement dated March 17, 2006, the witness states that he first met the

³The witness statement of [REDACTED] also states that the applicant began residing at Arena Way in December 1981. Due to this inconsistency, the statement of this witness has minimal probative value.



applicant in December 1981. Due to these inconsistencies, the statements of this witness have minimal probative value.

The record contains two statements from [REDACTED] the president of [REDACTED]. In a May 28, 2002 statement, the witness states that the applicant was a member of the temple from 1983 for the duration of the requisite statutory period. In an undated statement, the witness states that the applicant was a member of the temple from 1981 for the duration of the requisite statutory period. In addition, the applicant failed to list his membership in Sikh Livingston Temple, or any other religious organization, in the initial Form I-687 application, filed in 1990 to establish the applicant's CSS class membership, and in an undated I-687 application.⁴ At part 34 of the applications, where applicants are asked to list their involvement with any religious organizations, the applicant did not list any organizations. These are inconsistencies which are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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. [REDACTED] These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

More importantly, the witness statements do not meet the requirements set forth at 8 C.F.R. § 245a.2(d)(3)(v), which 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 the 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. These attestations fail to comply with the cited regulation. Therefore, these attestations are of little probative value.

The applicant has submitted three envelopes addressed to the applicant in the United States, with postmark dates of November 14, 1981, March 5, 1983 and 1987, respectively. However, a review of the postmark dates reveals that the dates have been altered by having been traced over. Therefore, these envelopes will be given no weight.

The record contains 6 receipts dated January 22, 1987 to February 24, 1987. These receipts fail to provide any information that would serve to link them to the applicant, such as his name and address. Therefore these documents will be given no weight.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act, an undated I-687 application and the initial I-687

⁴In the instant I-687 application, the applicant lists membership in, "Sikh Temples" located in, "all of No. California" from 1981 for the duration of the requisite statutory period.



application, filed in 1990 to establish the applicant's CSS class membership. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding his initial date of entry into the United States, as well as the locations where he resided and worked, and the dates of his absences from the United States.

In the instant I-687 application, the applicant listed two residence addresses in California during the requisite statutory period as follows: from June 1981 to December 1981 on [REDACTED] in Merced; and, from September 1981 for the duration of the requisite period at N. Arena Way in Atwater. The overlapping dates are incongruous. There are contradictions as to when and where the applicant resided. In addition, the applicant listed one absence from the United States during the requisite period, from May 20, 1987 to June 20, 1987. The applicant also listed employment from September 1981 for the duration of the requisite period as a driver/farm laborer with [REDACTED] Brothers in Atwater.

In the initial I-687 application, the applicant stated that he resided at Arena Way in Atwater beginning in December 1981. The applicant listed self-employment from June 1981 for the duration of the requisite period.

In an undated I-687 application, the applicant listed one absence from the United States during the requisite period, from May 20, 1987 to July 20, 1987.⁵

In a Form G-325A, biographic information sheet dated January 27, 1993, the applicant does not list Colony Lane in Merced as a residence address. At the part of the form which requests applicants to list their last address outside the United States of more than one year, the applicant stated that he resided in Punjab, India from his birth date on August 3, 1939 until July 1981.

In a sworn statement dated April 21, 2005, the applicant stated that he first arrived in the United States in June 1981.

In an undated registration form from the Association for Residency Citizen of America (ARCA) the applicant stated that he first entered the United States in May 1981.

The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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, supra*. The contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

⁵According to this version of the applicant's testimony, he was outside the United States for 61 days, and is thus ineligible for the benefit. An applicant may not have been absent for more than 45 days in a single period in order to maintain his continuous residence, unless he establishes an emergent reason for his absence. 8 C.F.R. § 245a.2(h)(1)(i).



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

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

Based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.

