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



U.S. Citizenship  
and Immigration  
Services



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Date: **JUL 06 2012**

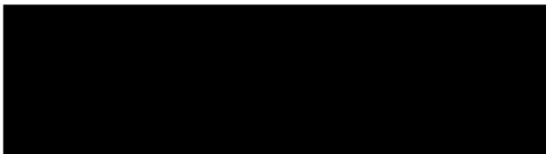
Office: FAIRFAX

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the Northwest Immigrant Rights Project (NWIRP) Settlement Agreements was denied by the director of the Fairfax office. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On November 29, 2005, the applicant filed an application for temporary resident status (Form I-687). On August 27, 2007, the director of the Fairfax office erroneously denied the I-687 application, finding that the applicant abandoned the application, pursuant to 8 C.F.R. § 103.2(b)(13), by failing to respond to a notice of intent to deny (NOID) the application.<sup>1</sup> Because the director erred in denying the application based on abandonment, on October 12, 2010, the director of the National Benefits Center issued a notice advising the applicant of the right to appeal to the AAO. On June 11, 2011 the director issued an amended decision finding the applicant to be ineligible for temporary resident status under the terms of the CSS/Newman Settlement Agreements, because she failed to establish that she began residing unlawfully in the United States on a date prior to January 1, 1982, and failed to establish that she continuously resided in the United States since that date and for the duration of the requisite period. The decision is now before the AAO on appeal.

On March 20, 2012, the AAO sent the applicant a follow-up communication informing the applicant of deficiencies in the record and providing her with an opportunity to respond. Specifically, the AAO requested that the applicant provide evidence that she continuously resided in the United States in an unlawful status since the date of her entry on August 22, 1981, and for the duration of the requisite period. In addition, the applicant was asked to explain material inconsistencies in her testimony regarding the dates she resided and worked at specific locations in the United States, as well as inconsistencies in her testimony regarding the dates of her absences from the United States during the requisite statutory period. In response, counsel has submitted a brief, and a statement from [REDACTED]

On appeal, counsel asserts that the evidence which the applicant previously submitted establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite period. Counsel also asserts that the inconsistencies in the applicant's testimony are due in part to ineffective assistance of "non-lawyer acquaintances and non-lawyer volunteers" that helped prepare the applicant's three Form I-687 applications, filed in June 1990, October 1990 and 2005, respectively. It is noted that any appeal based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent 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 respondent in this regard, (2) that counsel whose integrity or competence is being

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

<sup>2</sup> On appeal, counsel has also submitted copies of a statement of earnings for the applicant from the Social Security Administration, which documents have previously been submitted into the record.

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). The applicant has not submitted any of the required documentation to support an appeal based on ineffective assistance of counsel. Furthermore, the AAO only considers complaints based upon ineffective assistance against accredited representatives.<sup>3</sup> Therefore, the applicant is found not to have established a claim of ineffective assistance of counsel.

In addition, on appeal counsel also contends that the inconsistencies in the applicant's testimony are due to the applicant's "inability to correctly complete forms I-687" and the applicant's "poor English skills and unintentional mistakes." However, the applicant has never asserted that she cannot read and understand the English language, and she signed the three I-687 applications, certifying that the information contained in them is true and correct. Although counsel's brief contains the applicant's first-person explanation of inconsistencies in her testimony, and a listing of her residences and employment in the United States during the requisite period, the brief does not also contain the applicant's signature, nor has counsel provided a separate signed statement from the applicant explaining the inconsistencies in her testimony. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988). Regardless, for the reasons set forth below, the AAO finds that the applicant has not provided a reasonable explanation for the material inconsistencies in her testimony regarding the dates she resided and worked at specific locations in the United States, as well as the dates of her absences from the United States during the requisite statutory period. The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>4</sup>

Preliminarily, the AAO notes that the director adjudicated the application on the merits and presumptively found the applicant to be eligible for class membership under the terms of the CSS/Newman Settlement Agreements. On September 9, 2008, the court approved a final Stipulation of Settlement in the class-action NWIRP. Class members are defined, in relevant part, as:

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<sup>3</sup> Although the applicant was not assisted by an attorney but by a non-attorney representative, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his or 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 (1<sup>st</sup> Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

<sup>4</sup>The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

1. Class Members [include] all persons who entered the United States in a nonimmigrant status prior to January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A of the INA [Immigration & Nationality Act], 8 U.S.C. § 1255a, who are within one or more of the Enumerated Categories described below in paragraph 2, and who –

(A) between May 5, 1987 and May 4, 1988, attempted to file a complete application for legalization under § 245A of the INA and fees to an Immigration and Naturalization Service (INS) officer or agent acting on behalf of the INS, including a Qualified Designated Agency (QDE), and whose applications were rejected for filing (hereinafter referred to as ‘Subclass A members’); or

(B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization with an INS officer, or agent acting on behalf of the INS, including a QDE, under § 245A of the INA, but were advised that they were ineligible for legalization, or were refused legalization application forms, and for whom such information, or inability to obtain the required application forms, was a substantial cause of their failure to file or complete a timely written application (hereinafter referred to as ‘Sub-class B’ members); or

(C) filed a legalization application under INA § 245A and fees with an INS officer or agent acting on behalf of the INS, including a QDE, and whose application

- i. has not been finally adjudicated or whose temporary resident status has been proposed for termination (hereinafter referred to as ‘Sub-class C.i. members’),
- ii. was denied or whose temporary resident status was terminated, where the INS or USCIS action or inaction was because INS or USCIS believed the applicant had failed to meet the ‘known to the government’ requirement, or the requirement that s/he demonstrate that his/her unlawful residence was continuous (hereinafter referred to as ‘Sub-class C.ii members’).

2. Enumerated Categories

(1) Persons who violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government.

- (2) Persons who violated the terms of their nonimmigrant visas before January 1, 1982, for whom INS/DHS records for the relevant period (including required school and employer reports of status violations) are not contained in the alien's A-file, and who are unable to meet the requirements of 8 C.F.R. §§ 245a.1(d) and 245a.2(d) without such records.
- (3) Persons whose facially valid 'lawful status' on or after January 1, 1982 was obtained by fraud or mistake, whether such 'lawful status' was the result of
  - a. reinstatement to nonimmigrant status;
  - b. change of nonimmigrant status pursuant to INA § 248;
  - c. adjustment of status pursuant to INA § 245; or
  - d. grant of some other immigration benefit deemed to interrupt the continuous unlawful residence or continuous physical presence requirements of INA § 245A.

The AAO finds that the applicant is a member of the [REDACTED] class as enumerated above and will adjudicate the application in accordance with the standards set forth in the settlement agreement.

[REDACTED] provides that CSS/Newman legalization applications and Legal Immigration Family Equity Act of 2000 (LIFE) legalization applications pending as of the date of the agreement shall be adjudicated in accordance with the adjudication standards described in paragraph 8B of the settlement agreement. Under those standards, the applicant must make a *prima facie* showing that prior to January 1, 1982, he violated the terms of his nonimmigrant status in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government. It is presumed that the school or employer complied with the law and reported violations of status to the INS; the absence of a school or employer report in government records is not sufficient on its own to rebut this presumption. Once the applicant makes a *prima facie* showing of having violated nonimmigrant status in a manner known to the government, USCIS then must rebut the evidence that the applicant violated his status. If USCIS fails to rebut the evidence, the settlement agreement stipulates at paragraph 8B that it will be found that the applicant's unlawful status was known to the government as of January 1, 1982. With respect to individuals who obtained their status by fraud or mistake, the applicant bears the burden of establishing that he or she obtained lawful status by fraud or mistake. The settlement agreement further stipulates that the general adjudicatory standards set forth in 8 C.F.R. § 245a.18(d) or 8 C.F.R. § 245a.2(k)(4), whichever is more favorable to the applicant, shall be followed to adjudicate the merits of the application once class membership is favorably determined.

Thus, when an [REDACTED] class member demonstrates that she was present in the United States in nonimmigrant status prior to 1982, the absence from her record of a required address update or

notice of change of address due prior to January 1, 1982 is sufficient to demonstrate that she had violated her nonimmigrant status and was in unlawful status in a manner that was known to the government prior to January 1, 1982. See [REDACTED] settlement agreement, paragraph 8B. See also: section 265(a) of the Act as in place through December 29, 1981 (which indicates that nonimmigrants must notify the U.S. government in writing of a change of address within 10 days of the address change and must report their addresses at the end of each three-month period after entering, regardless of whether there is any address change.)

Applying the adjudicatory standards set forth in the settlement agreement, the AAO finds that the applicant violated the terms of her nonimmigrant status in a manner known to the government prior to January 1, 1982, by failing to file the required quarterly address update due prior to January 1, 1982. The record reveals that the applicant entered the United States at Washington, D.C. on August 22, 1981 as a nonimmigrant F-1 student, with authorization to remain in the United States until August 19, 1982 to attend [REDACTED]

The applicant states that she remained in the United States until February 4, 1982, when she departed the United States to attend her mother's funeral in [REDACTED] and the record reveals that she reentered the United States on February 15, 1982 as an F-1 student, with authorization to remain in the United States until February 14, 1983. In the instant I-687 application, the applicant states that she next departed the United States in October 1983 to go to [REDACTED] and reentered the United States in November 1983. In the initial I-687 application signed by the applicant on June 4, 1990, she states that on August 9, 1987, she departed to [REDACTED] to attend the wedding ceremony of her sister's friend, and reentered the United States on August 23, 1987 by car without inspection.

Until December 29, 1981, section 265 of the Immigration and Nationality Act (Act) stated that any alien in the United States in "lawful temporary residence status shall" notify the Attorney General "in writing of his address at the expiration of each three-month period during which he remains in the United States, regardless of whether there has been any change in address." See section 265 of the Act (1980) and PL 97-116, 1981 HR 4327 (1981), which confirms that section 265 was modified, effective December 29, 1981, such that lawful non-immigrants were no longer required to file quarterly address reports regardless of whether there had been any change in address.

As stated above, the applicant entered the United States in F-1 student status on August 22, 1981. The applicant asserts that she remained in the United States until February 4, 1982, when she departed and reentered the United States on February 15, 1982 as an F-1 student. The applicant would have been required to provide a written update of her address at the expiration of each three-month period during which she remained in the United States, regardless of whether there was any change in address, for the period August 22, 1981 to December 29, 1981. The record reveals that the applicant failed to file the required quarterly address report by November 22, 1981, three months after her August 22, 1981 nonimmigrant entry. The record of proceedings is devoid of any address update. For this reason, the AAO finds that the applicant violated her nonimmigrant status in a manner known to the government prior to January 1, 1982, by failing to file a quarterly address notification as required prior to December 29, 1981.

Consequently, for the reasons stated above, the AAO finds that the applicant violated the terms of her nonimmigrant status by failing to file a quarterly address notification as required prior to December 29, 1981, and her unlawful status was known to the government prior to January 1, 1982.

However, the AAO finds that the applicant has failed to establish that she resided continuously in the United States from the date of her entry on August 22, 1981, and for the duration of the requisite period. The record contains inconsistent statements from the applicant regarding the dates she resided and worked at specific locations in the United States, as well as the dates of her absences from the United States during the requisite statutory period.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. 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 [REDACTED] Settlement Agreement, 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. [REDACTED] Settlement Agreement paragraph 8 at pp. 14-15.

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. 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. 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. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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.

The applicant submitted, as proof of her entry into the United States and continuous residence in the United States during the requisite period, witness statements from [REDACTED] and an employment verification letter from [REDACTED]. The statements of the witnesses 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. However, the witness statements lack sufficient detail, because they fail to provide concrete information specific to the applicant which would demonstrate that the witnesses have a sufficient basis for reliable knowledge about her residence in the United States during the requisite period.

In addition, the statements of witnesses [REDACTED] and [REDACTED] regarding the dates the applicant resided at particular locations in the United States during the requisite period, are inconsistent with her statement in the instant I-687 application of the dates she resided at those particular locations. Further, in the instant I-687 application, and in the I-687 application signed by the applicant in June 1990, she failed to list any employment during the requisite period with [REDACTED].

The record contains a copy of the applicant's [REDACTED] issued to her in [REDACTED]. The passport contains on page seven an F-1 student visa issued to her at [REDACTED]. The passport also contains on page 6 a Washington, D.C. entry stamp dated August 22, 1981. The passport further contains on page 9 a Washington, D.C. entry stamp dated February 15, 1982. The record further contains a copy of a Form I-94, arrival/departure record, containing on its front a Washington, D.C. entry stamp dated February 15, 1982. The applicant has submitted a copy of her transcript from [REDACTED] showing that she completed the Fall 1981 and Spring 1982 semesters. These documents are some evidence in support of the applicant's residence in the United States for some part of 1981 and 1982.

The record contains a copy of a pay stub from [REDACTED] showing earnings in August and September 1983. The applicant failed to list any employment during the requisite period with [REDACTED] in the instant I-687 application, and in two additional I-687 applications signed by her in June 1990 and October 1990, respectively.

The applicant submitted a copy of a stamped envelope with a postmark date of May 12, 1985, sent to her at a post office box in [REDACTED]. However, she failed to list a residence in [REDACTED] in any of the three I-687 applications signed by her. The applicant also submitted an emergency room record from [REDACTED] dated December 17, 1985 which lists her residence as being on [REDACTED]. The applicant failed to list a residence address during the requisite period on [REDACTED] in any of the three I-687 applications signed by her.

The record contains a copy of lease dated April 10, 1986, signed by the applicant and Innocent Nnorom as tenants for one-year beginning May 1, 1986 and ending April 30, 1986 (sic) for premises located on [REDACTED]. The record also contains a list of classes taken and scheduled by the applicant at the [REDACTED]. The record further contains a copy of the back of a Form I-94, arrival/departure record, containing the notation that on May 30, 1986 the applicant's F-1 student status was extended, and her transfer to attend [REDACTED] was approved. The applicant submitted a copy of two pay stubs from [REDACTED]. The applicant also submitted a copy of correspondence from [REDACTED] dated September and October 1986. These documents are some evidence in support of the applicant's residence in the United States for some part of 1986. The record also contains a copy of a pay stub from [REDACTED] listing earnings for September and October 1986. However, the applicant failed to list any employment during the requisite period with [REDACTED] in any of the three I-687 applications signed by her.

The applicant submitted a copy of a pay stub dated October 3, 1987 from [REDACTED]. This document is some evidence in support of the applicant's residence in the United States for some part of 1987. She also submitted a copy of a lease application dated November 4, 1987, signed by her for a one-year term from December 1, 1987 through then end of the requisite period for premises located on Stonecroft. However, the applicant failed to list a residence during the requisite period on Stonecroft in the I-687 application signed by her in June 1990. The applicant submitted a copy of correspondence from [REDACTED] addressed to her on [REDACTED]. However, she failed to list a residence during the requisite period in [REDACTED] in any of the three I-687 applications signed by her.

The record contains a copy of two statements of earnings from the Social Security Administration, listing earnings for the applicant for the years 1982 through 1988.

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

The remaining evidence in the record is comprised of the instant I-687 application, an initial I-687 application signed by the applicant on June 4, 1990 to establish her CSS class membership, and an additional I-687 application signed by her on October 7, 1990. As stated above, the AAO finds in its *de novo* review that the record of proceedings contains inconsistent statements from the applicant regarding the dates she resided and worked at specific locations in the United States, as well as the dates of her absences from the United States, during the requisite statutory period.

At the time of completing the instant I-687 application, the applicant listed residences in the United States as follows: from August 23, 1981 to December 31, 1981 in [REDACTED]

[REDACTED] through the end of the requisite period on [REDACTED]

The applicant listed employment in [REDACTED], from June 1, 1984 to August 30, 1986 as a [REDACTED], and from September 1, 1986 through the end of the requisite period as an assistant sales manager with [REDACTED]. She listed two absences from the United States during the requisite period, from February 4 1982 to February 14, 1982 and from October to November 1983, respectively.

At the time of completing the initial I-687 application signed by the applicant in June 1990, she listed residences in the United States as follows: from August 1981 to May 1984 at [REDACTED]

[REDACTED] The applicant listed employment from June 1, 1984 to August [REDACTED], and from September 1987 through the end of the requisite period with [REDACTED]. She listed two absences from the United States during the requisite period, from February 4 1982 to February 15, 1982 and from August 9, 1987 to August 23, 1987, respectively.

At the time of completing the additional I-687 application signed by the applicant in October 1990, she listed residences in the United States as follows: from August 23, 1981 to July 1982 in [REDACTED]

[REDACTED] 1982 as a [REDACTED] although she did not state the specific location where she was employed; from 1982 to 1986 with [REDACTED]; and, from 1986 through the end of the requisite period with [REDACTED]. She listed one absence from the United States during the requisite period, from February 4 1982 to February 15, 1982.

The inconsistencies in the record regarding the dates the applicant resided and worked at specific locations in the United States, as well as the dates of her absences from the United States during the requisite statutory period are material to her claim, in that they have a direct bearing on her residence in the United States for the duration of the requisite period. As stated above, doubt cast on any aspect of an 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*. 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.

On March 20, 2012, the AAO cited the aforementioned inconsistencies in its follow-up communication. In response, the applicant submitted the statement of [REDACTED], her brother, who states that the applicant had two absences from the United States during the requisite period, in February 1982 and in August 1987, respectively. He also states that the applicant resided at his former apartment in [REDACTED] "on several occasions in 1985."

The statement of the applicant contained in counsel's brief on appeal is that during the requisite period she would periodically live with her sister [REDACTED] her brother [REDACTED] and her uncle [REDACTED] but she did not list these addresses in any of the three I-687 applications signed by her as residences during the requisite period because they were not her primary residences, but places she would stay intermittently. The AAO does not find this explanation to be reasonable, since, as noted above, the applicant otherwise listed these addresses as her residence on correspondence, insurance and medical documents in the record. The applicant states that her failure to list her address on [REDACTED] in the I-687 application signed in June 1990 was inadvertent. The applicant has not provided a reasonable explanation for the incongruity in her testimony, between and among the three I-687 applications, regarding the dates she resided at particular locations in the United States during the requisite period.

In addition, the statement of the applicant contained in counsel's brief on appeal is that during the requisite period she worked at the [REDACTED] but she did not list this employment in two of the I-687 applications, "because I submitted a verification of employment letter." However, this does not explain why the applicant failed to list this employment in the initial I-687 application signed by her in June 1990, and in the instant I-687 application signed by her in 2005. In addition, in counsel's brief on appeal the applicant states that she did not list in the three I-687 applications her employment during the requisite period with [REDACTED] because they were brief summer jobs. The applicant has not provided a reasonable explanation for the incongruity in her testimony, between and among the three I-687 applications, regarding the dates she worked at particular locations in the United States during the requisite period.

Further, the statement of the applicant contained in counsel's brief on appeal is that during the requisite period she had two absences from the United States during the requisite period, in February 1982 to [REDACTED]. The applicant asserts that the preparer of the instant I-687 application erroneously listed an absence from October to November 1983 to

However, the applicant has not explained why she did not list an absence from the United States in 1987 at the time she signed the I-687 applications in 2005 and October 1990, respectively.

The AAO does not find that the applicant has provided a reasonable explanation for the inconsistencies in her testimony regarding the dates she resided and worked at specific locations in the United States, or inconsistencies in her testimony regarding the dates of her absences from the United States during the requisite statutory period

Here, the applicant has failed to provide probative and credible evidence of her continuous residence from the date of her entry into the United States on August 22, 1981 and for the duration of the requisite period. The inconsistencies in the record regarding the dates the applicant resided and worked at specific locations in the United States, as well as the dates of her absences from the United States during the requisite statutory period are material to the applicant's claim in that they have a direct bearing on her 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 continuous residence since her entry in 1981 and through 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 she is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence 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 she 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 she 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.