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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

41

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: **AUG 31 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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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DISCUSSION: The applicant's status as a temporary resident was terminated by the Director, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In his decision, the director states that the applicant was granted lawful temporary residence on May 30, 2007. The director noted that the applicant submitted insufficient evidence of his continuous residence in the United States during the relevant period. The director also noted that the applicant was apprehended on January 3, 1997 attempting to enter the United States using a fraudulent Form I-551. During the interview with United States Citizenship and Immigration Services (USCIS) the applicant indicated that he had been living in the United States for 12 years, since 1985. On May 5, 2009, the director issued a Notice of Intent to Terminate (NOIT) in accordance with the regulations at 8 C. F. R. § 245a.2(u)(2)(i) and granted the applicant 30 days in which to submit evidence in rebuttal to the proposed termination of his temporary resident status. Based on the evidence submitted, the applicant failed to overcome the reasons stated in the NOIT. Therefore, the director determined that the applicant was not eligible for status as a temporary resident pursuant to Section 245A of the Act. The applicant filed a timely appeal.

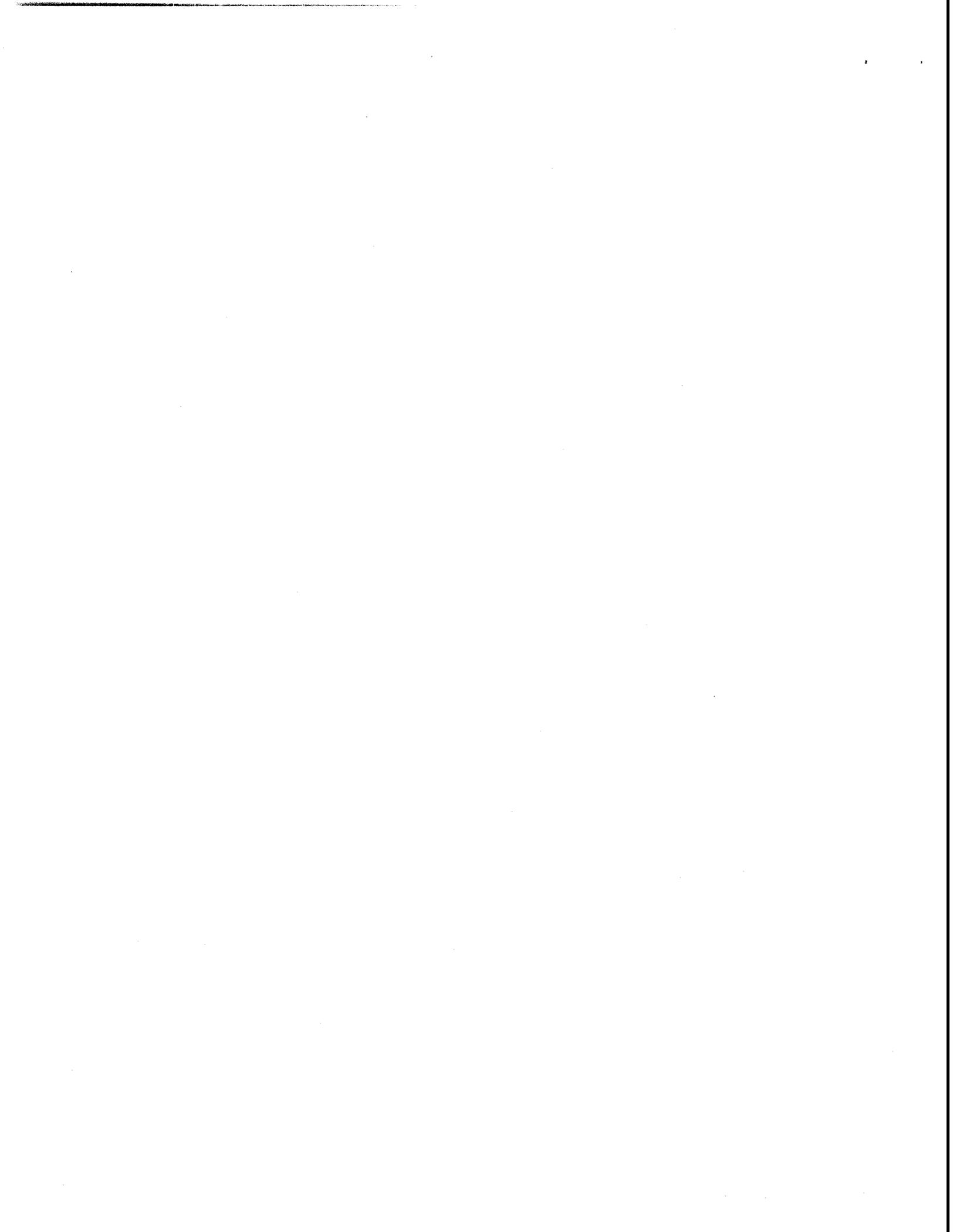
On appeal, the applicant requests a copy of the record of proceedings. This request was processed on June 9, 2010.¹ The applicant further indicates that the documents submitted in support of the applicant's eligibility were not afforded proper consideration.

Section 245A(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(b)(2) states in pertinent part that the Act provides for termination of temporary residence status granted to an alien if it appears to the Attorney General [now Secretary, Department of Homeland Security] that the alien was in fact not eligible for such status, or the alien commits an act that makes the alien inadmissible to the United States as an immigrant, or the alien is convicted of any felony or three or more misdemeanors committed in the United States. *See also* 8 C.F.R. § 245a.4(b)(20)(i)(A).

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

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

¹ NRC2010016602



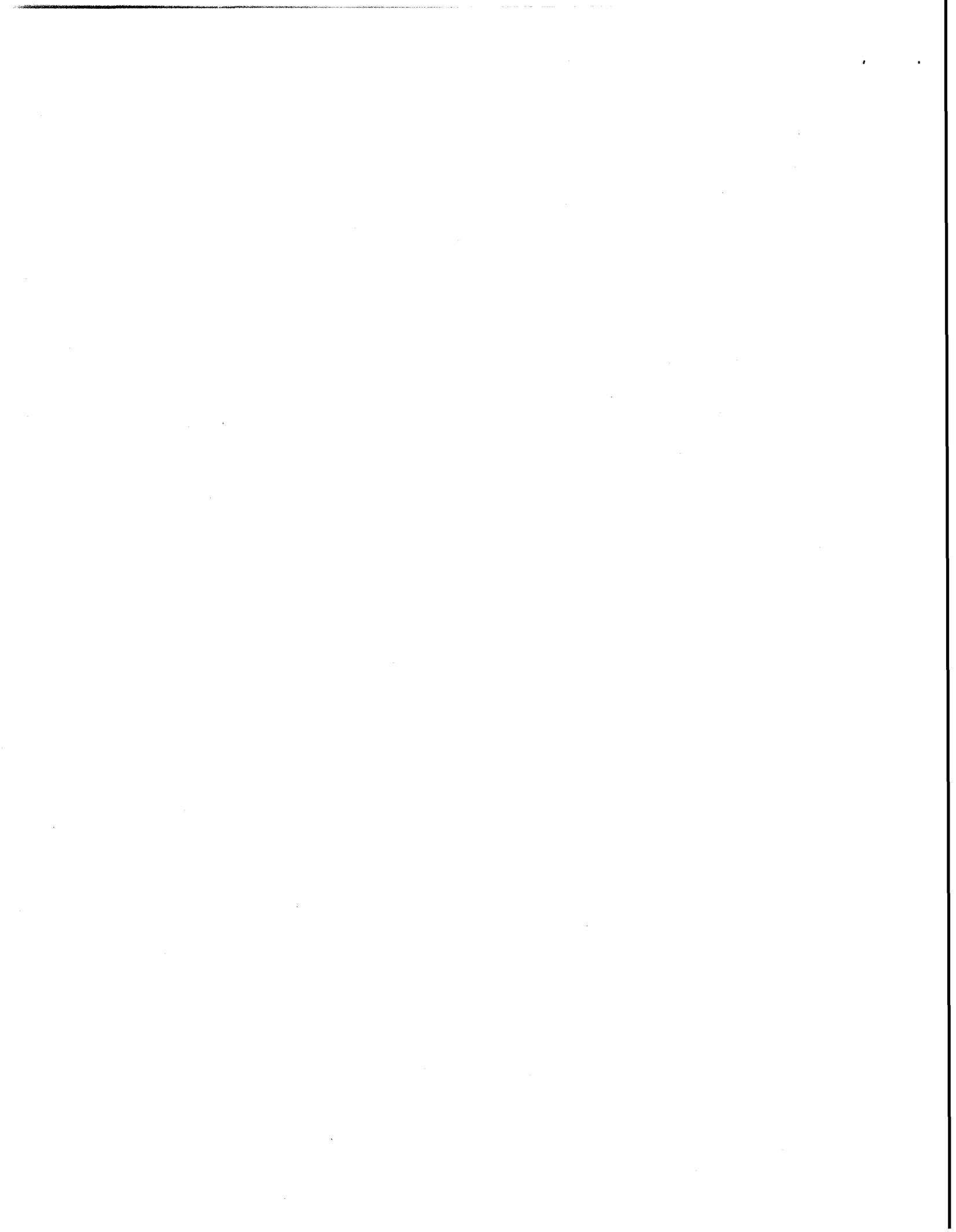
Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant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

The issue in this proceeding is whether the applicant established 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 documents submitted in support of the applicant’s eligibility include:

- A letter from the Cathedral of the Blessed Sacrament indicating that the applicant was a member of the Parish from 1981 until 1984. The letter is dated June 30, 2009 and signed by [REDACTED]. The director noted that the this letter does not conform to the statutory requirements for attestations by churches, unions, or other organizations, which is found at 8 C.F.R. § 245a.2 ((d)(3)(v). That regulation requires such attestations to “show the inclusive dates of membership and state the address where the applicant resided during the membership period.” [REDACTED] does not provide the address where the applicant resided during the membership period or indicate whether organization records were referenced. Thus, it can be given no probative weight. On appeal, council indicates that the applicant was denied due process because he was not informed of the need to include the above details in the letter. This assertion is without merit since the applicant was notified in the NOIT of the deficiencies with the letter and he failed to respond.
- A letter from Our Lady of Guadalupe Church, [REDACTED] signed by [REDACTED] indicates that the applicant was a member of the Parish since 1984. This letter also fails to include the information required by 8 C.F.R. § 245a.2 ((d)(3)(v). The applicant’s address during the relevant period is not provided, and it is not clear whether organizational records were referenced.



- A copy of a receipt from USC Medical Center dated August 15, 1986. This provides some evidence of the applicant's presence in Los Angeles in August 1986, however, it is not indicative of continuous residence.
- A copy of a rental agreement dated April 7, 1986 for the apartment at [REDACTED]

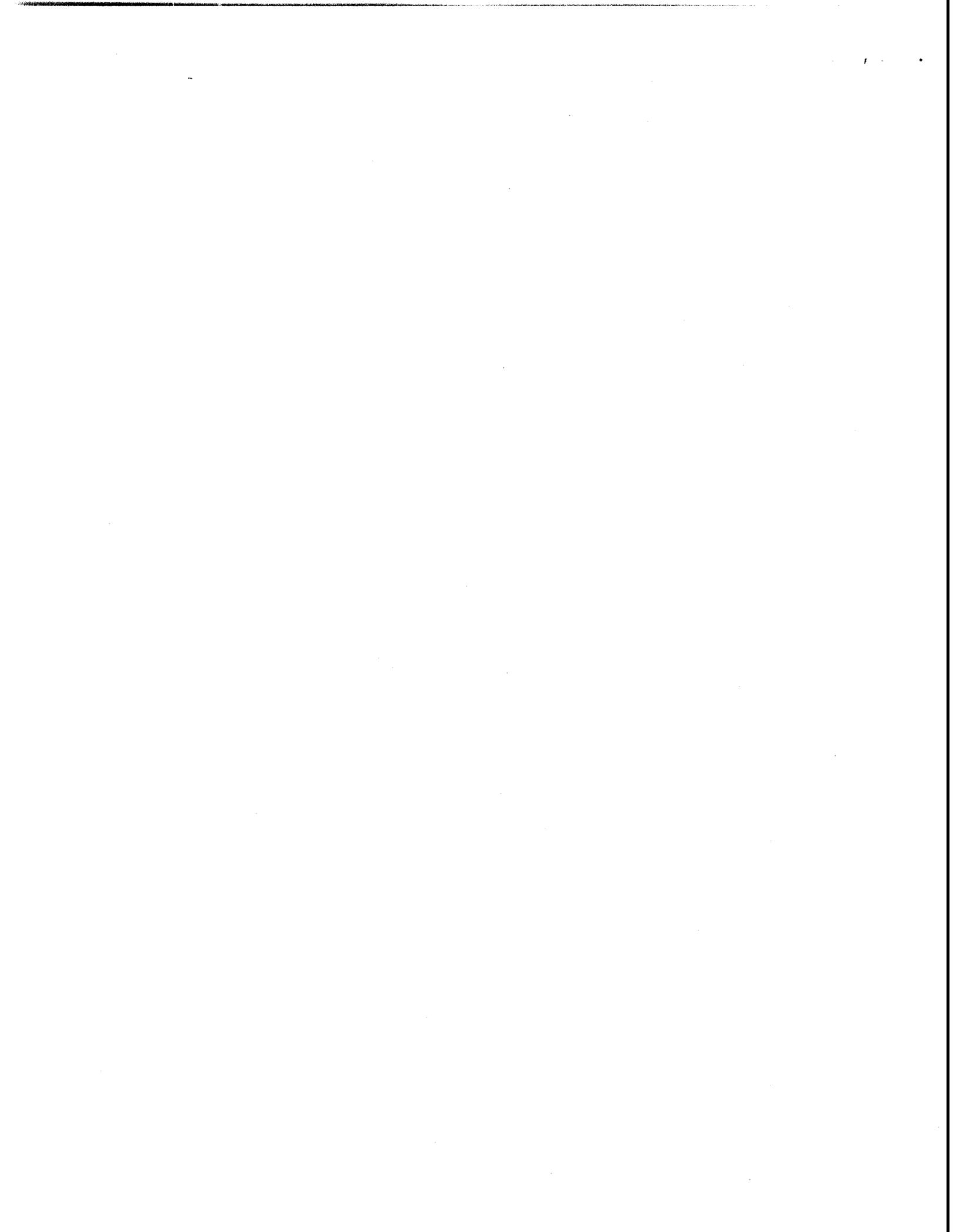
An employment letter from [REDACTED] indicating that the applicant worked as a Field Supervisor for the company from January 1986 until December 1992. Although the statement is on company letterhead, it is not notarized. It also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether USCIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by [REDACTED] does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period. Furthermore, the applicant did not identify this employer on his Form I-687.

- Affidavits from [REDACTED] Although the affiants indicate that they met the applicant in the United States during the relevant period, their statements are not notarized and the affiants offer no indication that they have direct, personal knowledge of the applicant's continuous residence in the United States. They do not indicate where or under what circumstances they met the applicant, the addresses at which the applicant lived during the requisite period, their frequency of contact with him during this period, or any other details of the events and circumstances of the applicant's residence.

Upon review, the documents do not include sufficient detailed information about the applicant's continuous residency in the United States since before January 1, 1982 and throughout the requisite period. The affiants fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The only other evidence submitted in support of the application includes a W-2 for 1988 indicating that the applicant worked for Special Iron Security Systems and handwritten receipts which are unverifiable.

Therefore, based upon the foregoing, the applicant is ineligible for temporary residence because she 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*. Any temporary resident status previously granted to the applicant is terminated.



It is further noted that the applicant was apprehended on January 3, 1997 attempting to enter the United States using a fraudulent Form I-551. During the interview with United States Citizenship and Immigration Services (USCIS) the applicant indicated that he had been living in the United States for 12 years, since 1985.

The above derogatory information indicates that the applicant have misrepresented the date that the applicant first arrived in the United States and thus casts doubt on the applicant's eligibility for temporary residence.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

By seeking admission to the United States using fraudulent documentation, the applicant has rendered himself inadmissible to the United States. Thus, he is ineligible for temporary residence on this basis as well.

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

