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



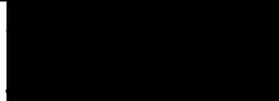
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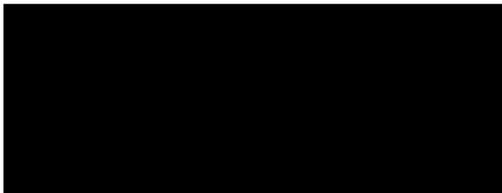
MSC 05 131 12931

IN RE: Applicant:



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

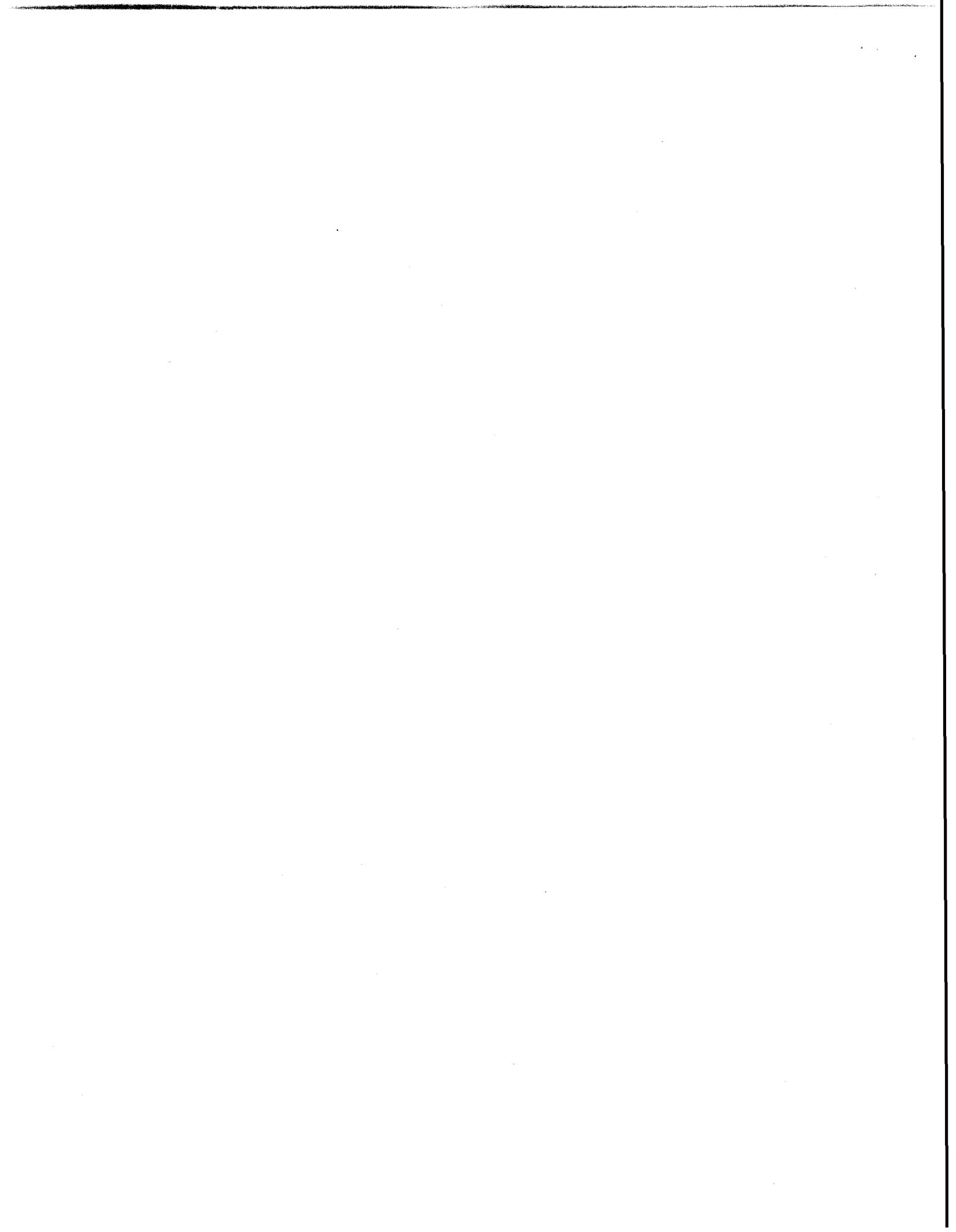
ON BEHALF OF APPLICANT:



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 settlement agreements reached in *Catholic Social Services, Inc., et al. v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) on January 23, 2004, and *Felicity Mary Newman, et al. v. United States Citizenship and Immigration Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director in Miami, Florida. It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period for legalization that ended on May 4, 1988.

On appeal counsel asserts that the evidence of record was not properly considered and that the documentation submitted by the applicant establishes her continuous residence in the United States during the requisite time period to be eligible for temporary resident status.

Applicants for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish their entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 through the date the application is filed. See section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). Applicants must also establish their continuous physical presence in the United States since November 6, 1986. See 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. See 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 the regulation at 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 from May 5, 1987 to May 4, 1988. See CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

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

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.

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 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.

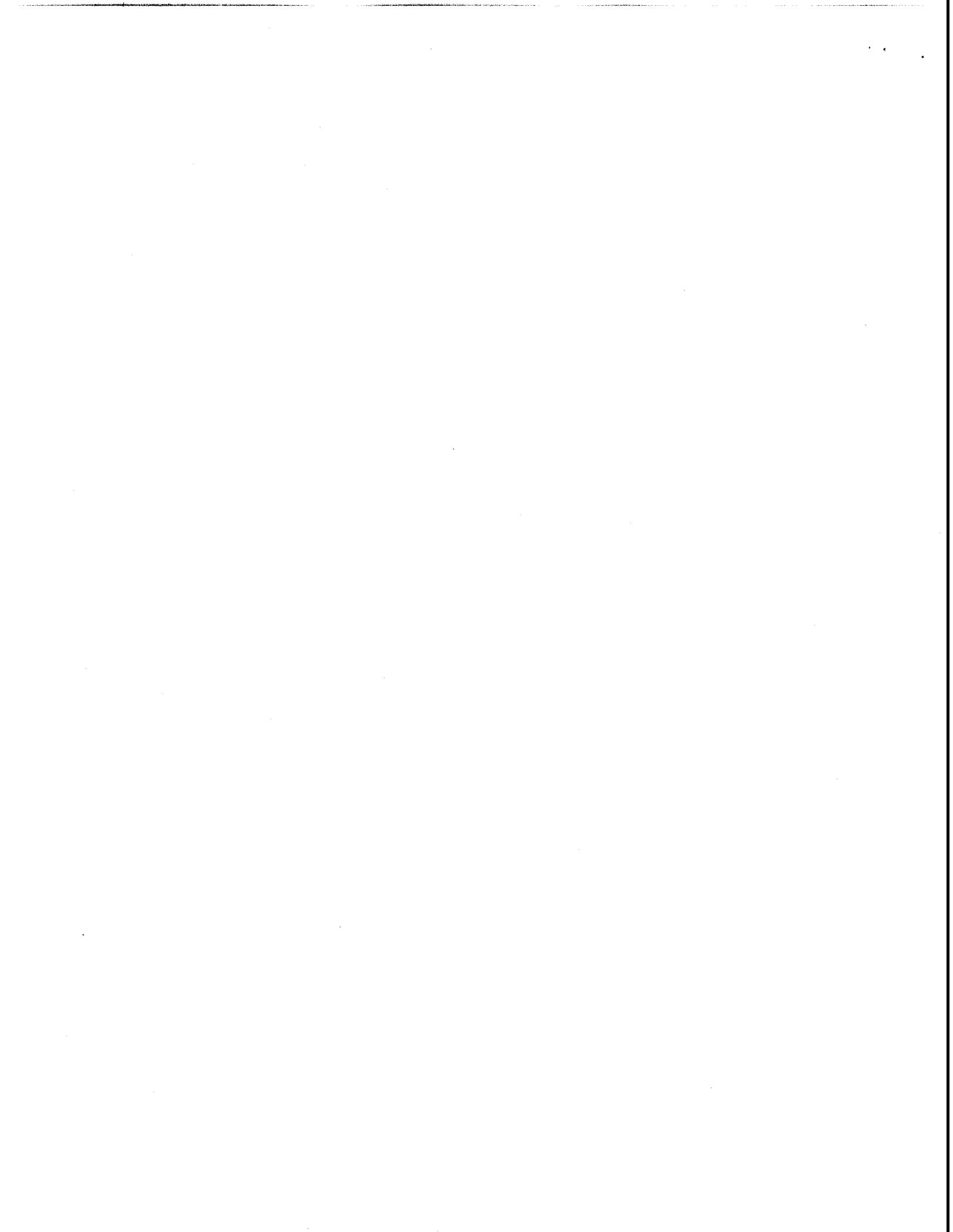
The regulations provide an illustrative list of documents – which includes affidavits and “any other relevant document” – that an applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant, a native of Trinidad who claims to have lived in the United States since September 1981, filed her application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on February 8, 2005. At that time the record included the following evidence of the applicant’s residence and physical presence in the United States during the years 1981-1988, which had been submitted with an earlier Form I-687 the applicant filed in December 1989 and/or in connection with a Form I-485 (application for permanent resident status) filed on July 30, 2001:<sup>1</sup>

- Three photocopied merchandise receipts from stores in New York City, dated in 1982 and 1984.
- Five notarized letters or affidavits from residents of Florida, Georgia, and New York, dated in June and July 2001 – four of whom indicate that they had known the applicant in the United States since the mid-1980s and the other of whom indicated that he had known the applicant in the United States since the early 1980s.
- A letter from the administrative assistant of Trinity Church in Miami, Florida, dated February 3, 2004, stating that the applicant and her husband, Hemant Singh, were members of the church and had been attending services since 1985.

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<sup>1</sup> The application for permanent resident status was denied by the District Director in Miami on September 10, 2007. An appeal was filed with the AAO, which is being adjudicated simultaneously with the instant appeal.



December 29, 2004, stating that he met the applicant and applicant's boyfriend and future husband) in 1981 at [REDACTED] where the latter was offered a parking attendant job. By 1984 [REDACTED]

during the day at a building owned by [REDACTED]. As compensation for this work Mr. Jadoo states that he let [REDACTED] and the applicant live in the basement free of charge. [REDACTED] indicates that he used to socialize with [REDACTED] and the applicant on Saturday nights.

[REDACTED], a resident of Sunrise, Florida, dated December 29, 2004, stating that she met the applicant and [REDACTED] in 1982 at a department store in New York City. According to [REDACTED] they exchanged telephone numbers and were in occasional contact by phone until the applicant and Hemant Singh moved from New York to Miami around 1984, at which time [REDACTED] helped the applicant get work as a housekeeper with her in-laws. [REDACTED] indicates that the applicant and Hemant Singh were married in May 1989, and that she and her family attended and paid for everything in gratitude for the applicant's household service.

At her interview on February 15, 2007, the applicant resubmitted the 2004 affidavits from [REDACTED] but offered no additional evidence.

On July 28, 2007, the director issued a Notice of Intent to Deny (NOID), indicating that the documentation of record was insufficient to establish the applicant's continuous residence in the United States during the time period of 1981 to 1988. The applicant was given 30 days to submit additional evidence.

Counsel responded with a brief asserting that the evidence already in the record was not being properly considered and indicating that the applicant did not have any further documentation of her U.S. residence during the 1980s. According to counsel, the applicant initially entered the United States with a visitor's visa in 1981, and became illegal when she overstayed her visa, but the applicant cannot show her initial entry in 1981, however, because her passport was stolen in a robbery. As "proof" thereof counsel submitted a photocopied police report that included an affidavit by the applicant concerning the robbery and lost passport.

On September 1, 2007, the director issued a Notice of Decision denying the application. The director determined that the record failed to establish the applicant's continuous unlawful residence in the United States for the requisite period to qualify for temporary resident status.

Counsel filed a timely appeal (Form I-694), reiterating his contention that the documentation in the record was not being properly considered and that the totality of the evidence establishes the applicant's continuous residence in the United States during the requisite period to qualify for temporary resident status. Counsel stated that an appeal brief and additional evidence would be



filed after the applicant received the record of proceedings. Though the record of proceedings has been made available to the applicant and counsel, no further materials have been received in support of the appeal.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

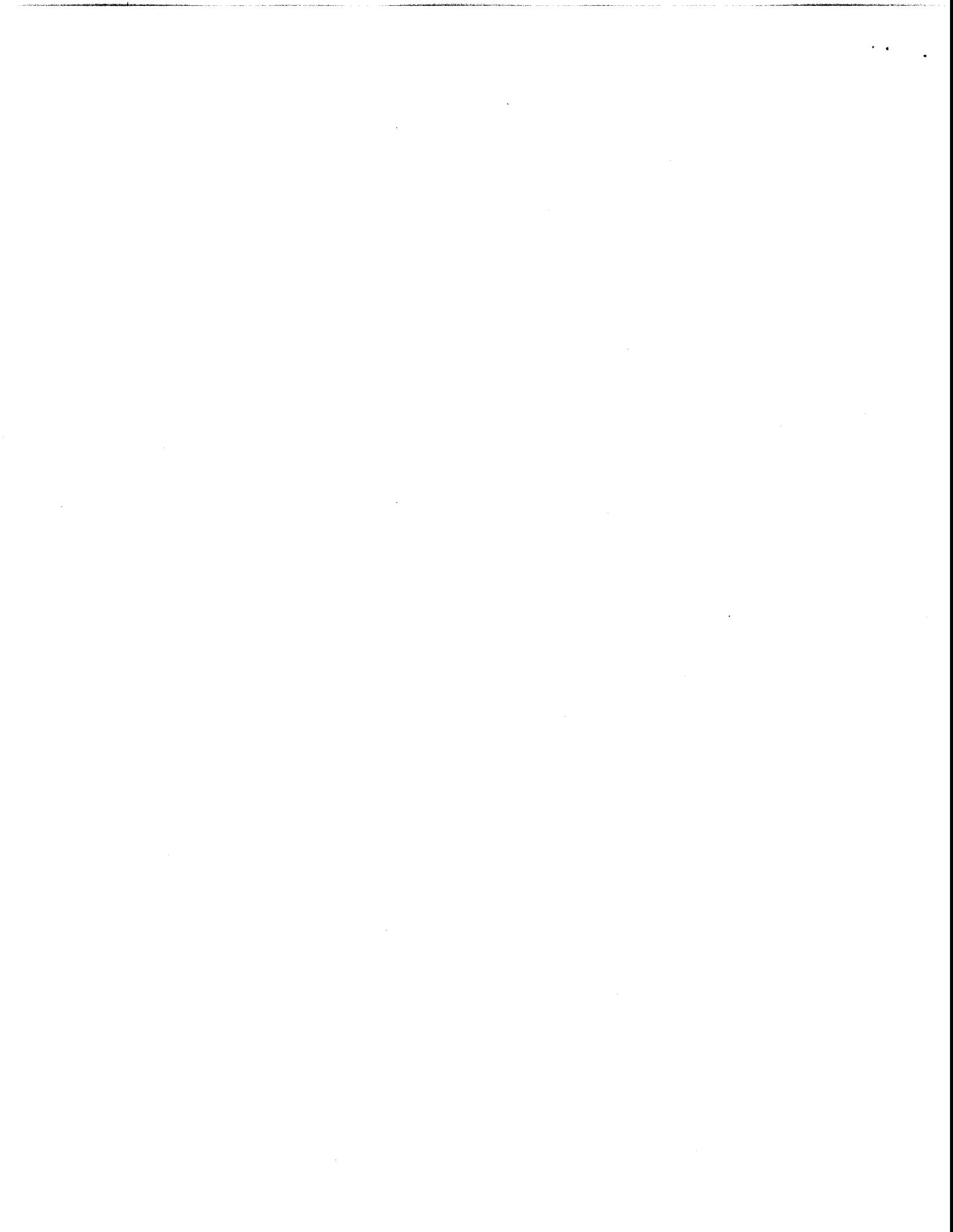
The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided continuously in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. The AAO determines that she has not.

With respect to the applicant's robbery, in which it is asserted that her passport was stolen, there are conflicting dates about when it occurred. The police report is dated August 31, 1993. The applicant's affidavit, however, is dated four months earlier, on April 26, 1993. Moreover, in her affidavit the applicant stated that the robbery occurred on August 24, 1992 – a full year before the police report. In addition to these discrepancies, the applicant stated in her affidavit that the passport lost in the robbery was issued to her in Trinidad in 1985 or 1986. That passport, therefore, would have had no record of her alleged entry into the United States in 1981.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. See *Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). The applicant has not explained any of the myriad inconsistencies discussed above. Moreover, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. See *id.*

The photocopied merchandise receipts bearing dates in 1982 and 1984 have little or no evidentiary weight. They all contain longhand entries with no date stamps or other official marks to verify that they were actually prepared in 1982 and 1984. Moreover, two of the three do not even identify the customer. One receipt does identify the applicant as the customer, but provides no address for her. Thus, the receipts are not persuasive evidence that the applicant resided in the United States in 1982 or 1984.

As for the five notarized letters/affidavits in 2001, from individuals who claim to have known the applicant in the United States since the 1980s, four of the authors only claim to have known the applicant since 1985 or 1986, and therefore cannot attest to her residence in the United States during earlier years. All of these documents, including the one from the individual who claims to have known the applicant in the United States since the time of her alleged entry in 1981, are very brief. They provide almost no information about the applicant's life in the United States during the 1980s, or the nature and extent of the authors' interaction with the applicant during that time. Nor are they accompanied by any documentary evidence – such as photographs,



letters, and the like – of the applicant’s personal relationship with any of the authors in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the referenced documents have little or no probative value. They are not persuasive evidence of the applicant’s continuous unlawful residence in the United States during the years 1981-1988.

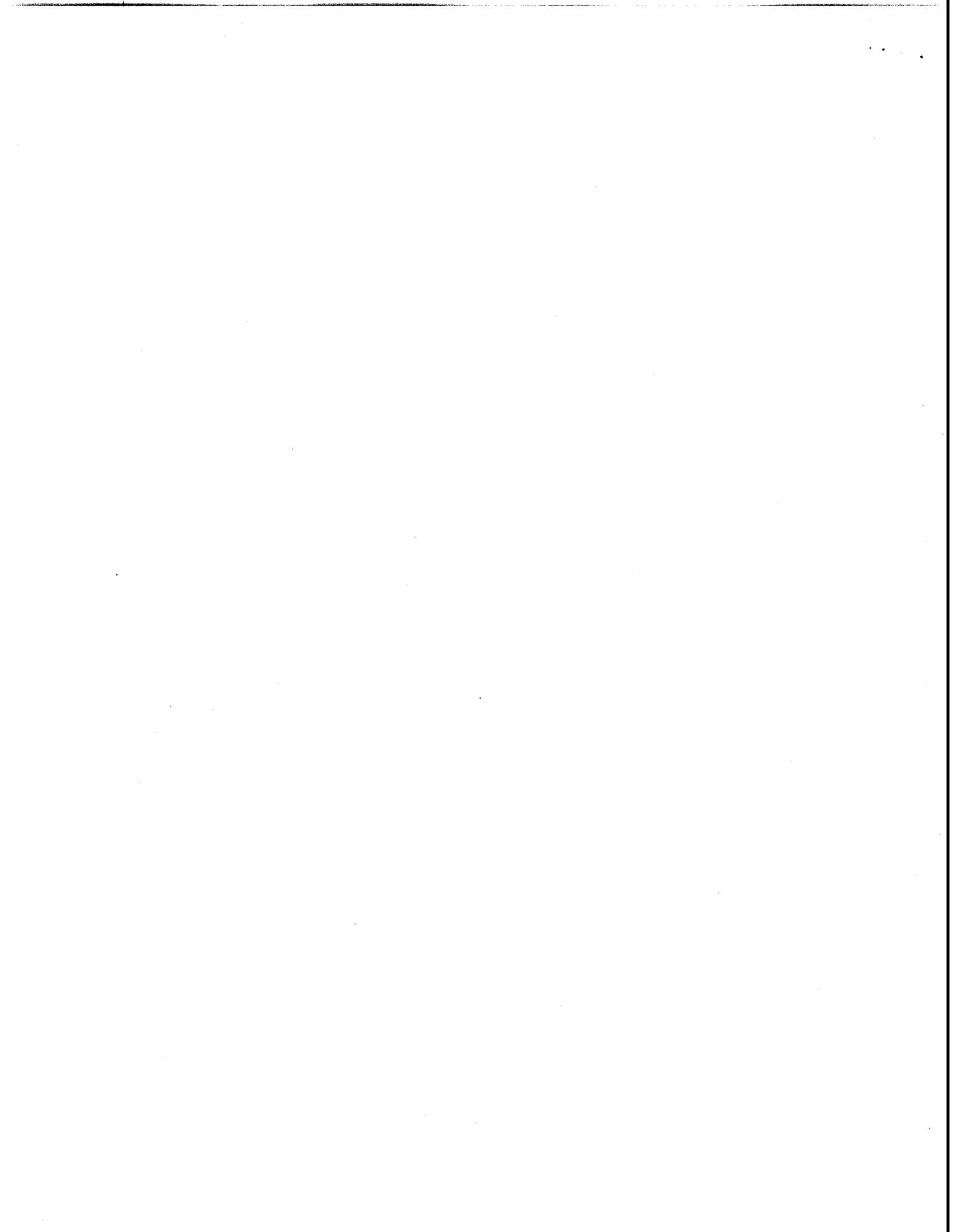
With regard to the letter from the administrative assistant of [REDACTED] in Miami, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations by churches, unions, and other organizations as to the applicant’s residence must (A) identify the applicant by name; (B) be signed by an official whose title is shown; (C) show inclusive dates of membership; (D) state the address where the applicant resided during the membership period; (E) include the seal of the church impressed on the letter or the letterhead of the church if it has letterhead stationery; (F) establish how the church official knows the applicant; and (G) establish the origin of the information about the applicant.

The letter from [REDACTED] in 2004 does not meet all the above criteria. In particular, it does not state where the applicant lived during the 1980s; does not establish how the administrative assistant knows the applicant, such as the date and circumstances of their meeting and the extent of their interaction over the years; and does not establish the origin of her information about the applicant’s membership since 1985, such as whether it comes from church records or is based on the hearsay of others. Moreover, the letter’s author does not even claim to know where the applicant was before 1985. Accordingly, the letter from Trinity Church has little probative value as evidence of the applicant’s continuous unlawful residence in the United States during the years 1981-1988.

[REDACTED] have more content than the letters and affidavits from 2001, but they are still short on specifics. Neither affiant stated where the applicant lived during the 1980s. In fact, both affidavits focused more on the applicant’s boyfriend, Hemant Singh, whom the applicant later married in 1989. Neither affiant provided detailed information about the applicant spanning the time frame of 1981 to 1988. Furthermore, neither affidavit is accompanied by any documentary evidence – such as photographs, letters, and the like – of the applicant’s personal relationship with either of the affiants in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have limited probative value. They are not persuasive evidence of the applicant’s continuous unlawful residence in the United States during the years 1981-1988.

There are other photocopied documents in the record with dates from the 1980s with no evident connection to the applicant. They do not identify or have any discernible relationship to the applicant on the face of the documents. There are also some photographs of unstated and unverifiable date and location. None of these additional documents merits further consideration.

Based on the foregoing analysis of the evidence, the AAO determines that the applicant has failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original



one-year application period for legalization that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A of the Act.

The appeal will be dismissed, and the application denied.

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

