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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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

Office:

Date: **MAY 07 2010**

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.

Robert H. McCormack
[Redacted Signature]
Chief, Administrative Appeals Office

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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 Director, Baltimore. The decision 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 Class Membership Worksheet. In denying the application, the director determined that the applicant 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 period. The director also noted a discrepancy in the applicant's statements contained in the record of proceeding.¹ The director denied the application, finding that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

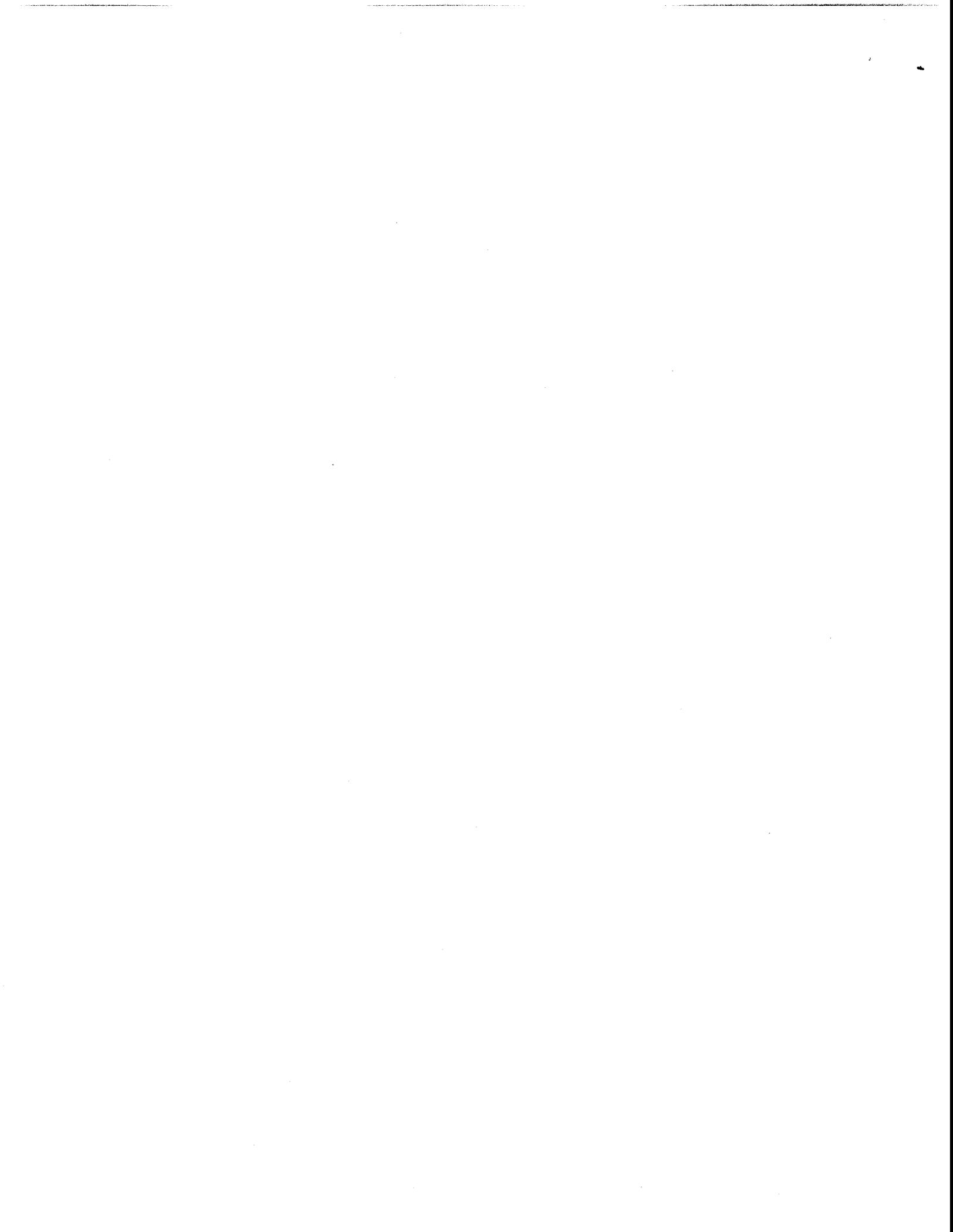
On appeal, counsel asserts that the director erred in his decision and that the denial was based upon inaccurate information. Counsel further asserts that the applicant was not in New York in October 1984, and that the applicant has submitted sufficient evidence to establish his residence in the United States during the requisite period.

The AAO issued a Notice of Intent to Deny (NOID) to the applicant dated February 27, 2010. The applicant was given 30 days in which to respond to the NOID. The applicant responded twice to the NOID; on March 29, 2010 and April 20, 2010, respectively.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Counsel submits evidence in support of the applicant's claim of eligibility. The AAO will consider, on a *de novo* basis, the applicant's response to the NOID and the evidence contained in the record of proceeding.

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 has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C.

¹ The portion of the director's decision regarding the applicant's statements made on October 11, 1994 at John F. Kennedy Airport in New York is not supported by the evidence in the record and is therefore withdrawn.



§ 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 CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) 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. See CSS Settlement Agreement paragraph 11 at page 6;

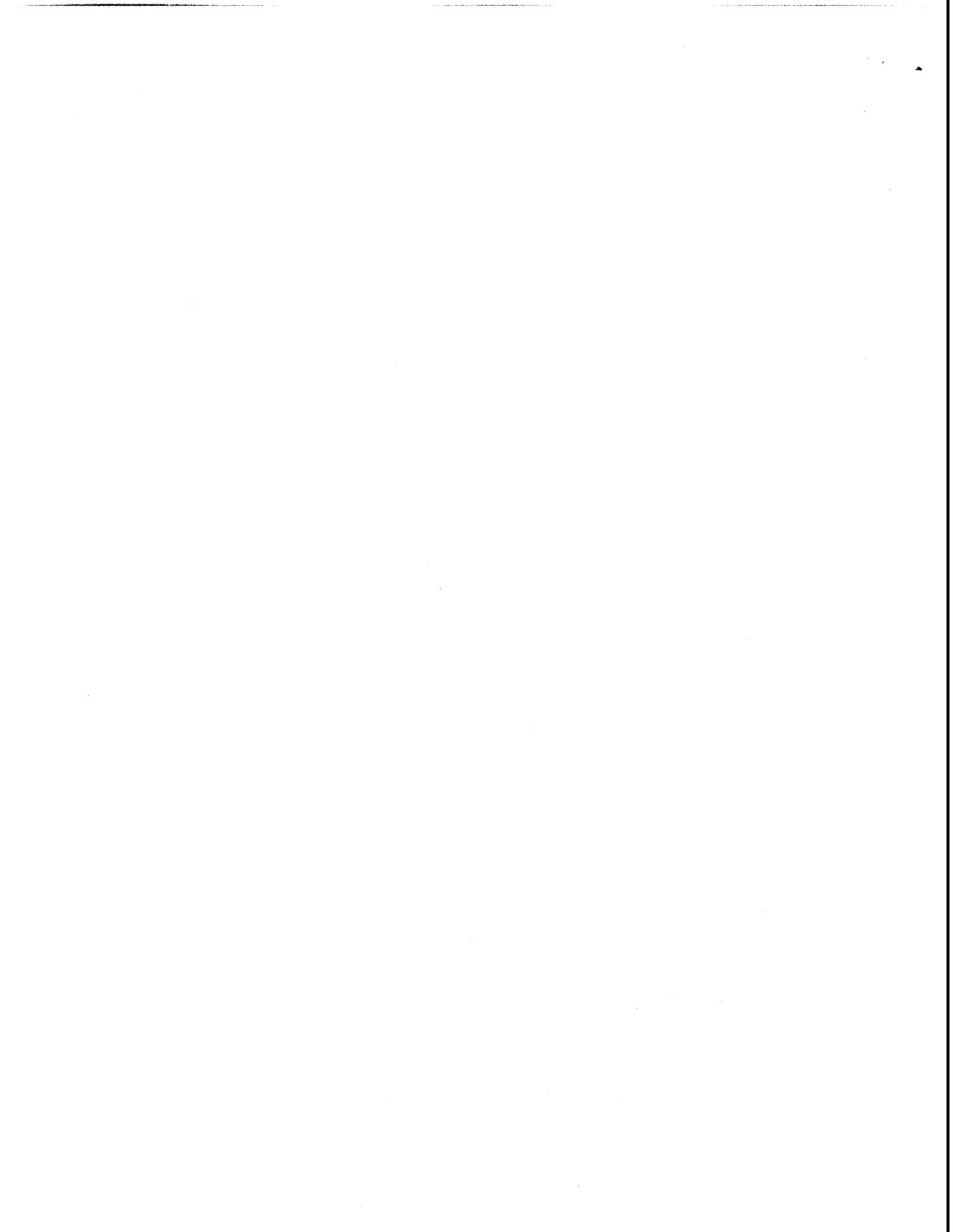
The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to 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* [REDACTED], 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of* [REDACTED] 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 his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

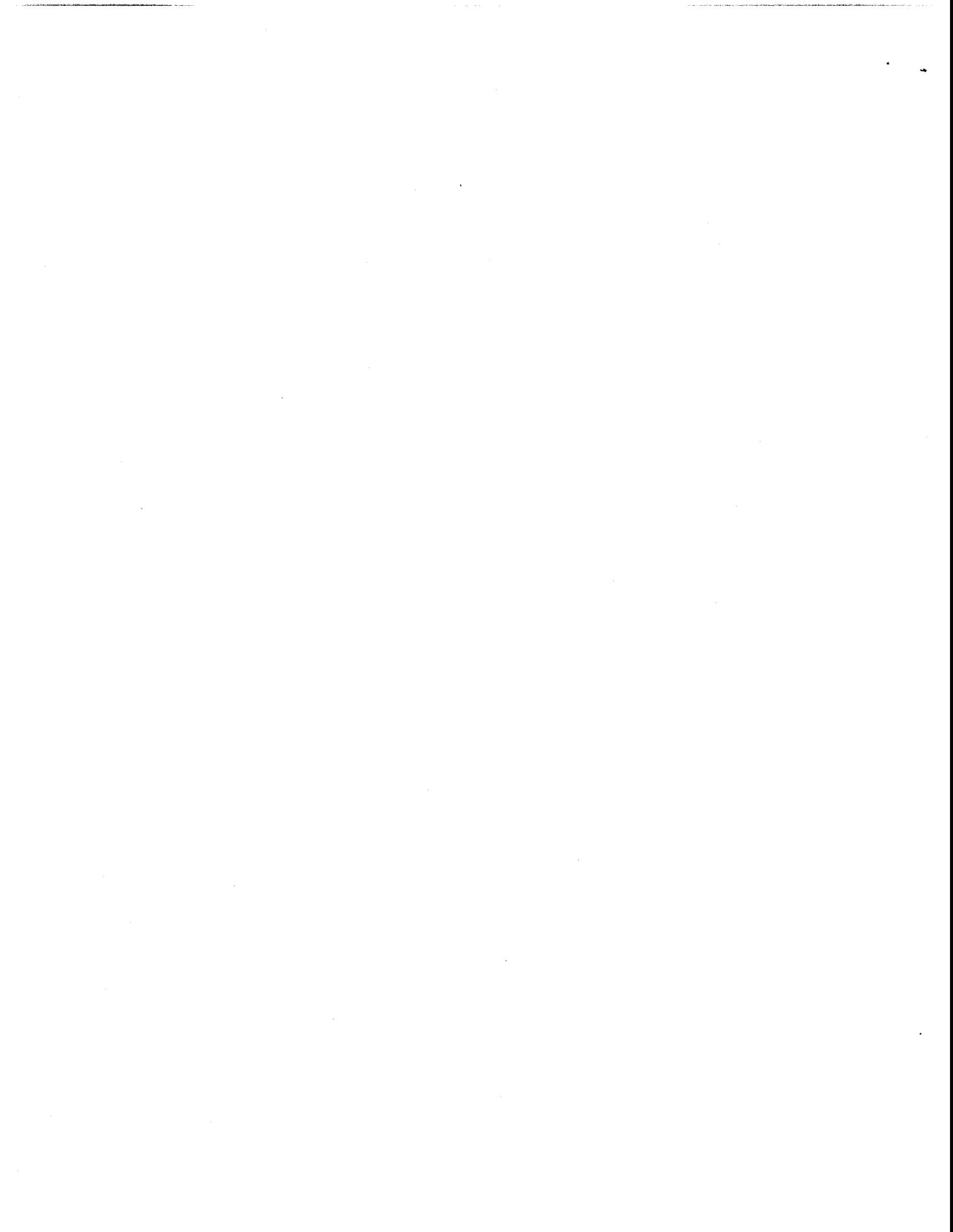


As stated above, the record shows that the applicant submitted a Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The applicant indicated on his current Form I-687 application at part #30, where he was asked to list his residence history that he resided at 226 West 50th Street, apartment #510 in New York, New York from September 1980 to September 1988. In contrast, the applicant stated under penalty of perjury on two previously submitted Form I-687 applications at part #33 that he resided at 230 West 54th Street, apartment #205 in New York, New York from October 1981 to September 1988.

The applicant submitted rent receipts from Hotel Bryant located at [REDACTED] in New York, dated October 1981 and a letter from the hotel stating that he lived there from 1981 to 1987; however, on the applicant's current Form I-687 at part #30 he stated under penalty of perjury that he resided at 226 West 50th Street in New York from September 1980 to September 1988. On the applicant's Form G-325, Biographic Information, signed and dated March 22, 1993, the applicant indicated that he resided at 10416 34th Avenue in Corona, New York from July 1985 to September 1991.

The applicant indicates on his current Form I-687 application at part #33 where he was asked to list his employment history, that he was employed as a clerk/cashier at the Gaza Supermarket from December 1981 to November 1986; and that he was employed as a cook at Ground Round Restaurant in White Plains, New York from January 1987 to September 1988. In contrast, the applicant indicated on his previous Form I-687 application at part #36 that he was first employed in the United States as a "street vendor" from October 1988 to May 1991. This information is inconsistent with the employment letters received from the Gaza Supermarket and Ground Round Restaurant in which it is indicated that the applicant was employed from December 1981 to November 1986 and from January 1987 to December 1988, respectively. In addition, the applicant submitted affidavits dated September 10, 2003 and December 19, 2003 from Patricia Fisher in which she stated that she first met the applicant in January 1981 at 52nd and 5th Avenues in Manhattan where he was selling African arts and crafts as a street vendor and that this business was his major source of income.

The applicant submitted an employment letter from the Gaza Supermarket in which it is stated that he was employed as a stock boy and cashier from [REDACTED]. The applicant also submitted an employment letter from the Ground Round Restaurant in which it is stated that he was employed as a cook/helper from January 1987 to September 1988. The letters do not conform to regulatory standards for attestations by employers. Specifically, the letters do not specify the exact dates of employment or any periods of layoffs. 8 C.F.R. § 245a.2(d)(3)(i). The declarants fail to indicate whether the employment information was taken from company records and fails to supply payroll records or attendance records to substantiate their claims. 8 C.F.R. § 245a.2(d)(3)(i). As the letters do not comply with much of the regulation, they will be given nominal weight.



The applicant submitted an affidavit from [REDACTED] who stated that they have known the applicant since November/December 1981. These statements lack detail sufficient to demonstrate their relationships with the applicant.

The applicant also submitted a copy of an envelope whose stamp date is not legible.

[REDACTED] in which it is stated that the applicant has been a member of the temple since March 1981. The letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not specify the address where the applicant resided during the membership period; nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). Thus, it will be given nominal weight.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States throughout requisite period. The affidavits in the record are lacking in detail and are too general to be found credible or probative. None of the affiants indicate credible personal knowledge of the applicant's entry into the United States prior to January 1, 1982, nor do they credibly describe the applicant's continuous residence throughout the requisite period. The failure to meet regulatory standards also detracts from the probative value of some of the affidavits.

As noted above, the AAO issued a NOID to the applicant on February 27, 2010. In response to the NOID, the applicant submits his affidavit in which he states with respect to his residence in the United States: he was confused about some of the addresses; that some of the addresses were only a temporary residence; and that typographical errors were made on some of the documents. With respect to the applicant's employment history he states that some jobs were part-time, some he worked at periodically, that he has always worked as a vendor to supplement his income until 1988, when vending provided him with his sole source of income.

The applicant submitted a supplemental affidavit from [REDACTED] in which she states that she has known the applicant since 1981/1982 and that she met the applicant while shopping in Manhattan, New York. She also states that she developed a friendship with the applicant and that she would see him whenever she was in New York to get her hair done and to go shopping. The affiant states that the applicant helped her in 1985 when she was pregnant and in a financial bind. Although the affiant states that she has known the applicant since 1981/1982, the statement does not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the affiant fails to demonstrate how she had personal knowledge of the applicant's presence in the United States. Further, the affiant does not provide information regarding the applicant's place of residence during the requisite period. Given these deficiencies, the affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982, and resided in the United States throughout the requisite period.



The record of proceeding in this matter contains many inconsistencies which call into question the credibility of the applicant's statements. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the director's basis for denial. The inconsistencies and lack of detail in the affidavits cast doubt on the applicant's evidence and proof.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detract 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 many inconsistencies found in the record, and the applicant's reliance on evidence that is lacking in detail and that has little probative value, it is concluded that he 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 [REDACTED] 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.

