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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

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[REDACTED]

FILE: [REDACTED] MSC-06-098-28334

Office: [REDACTED] Date: MAY 26 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:

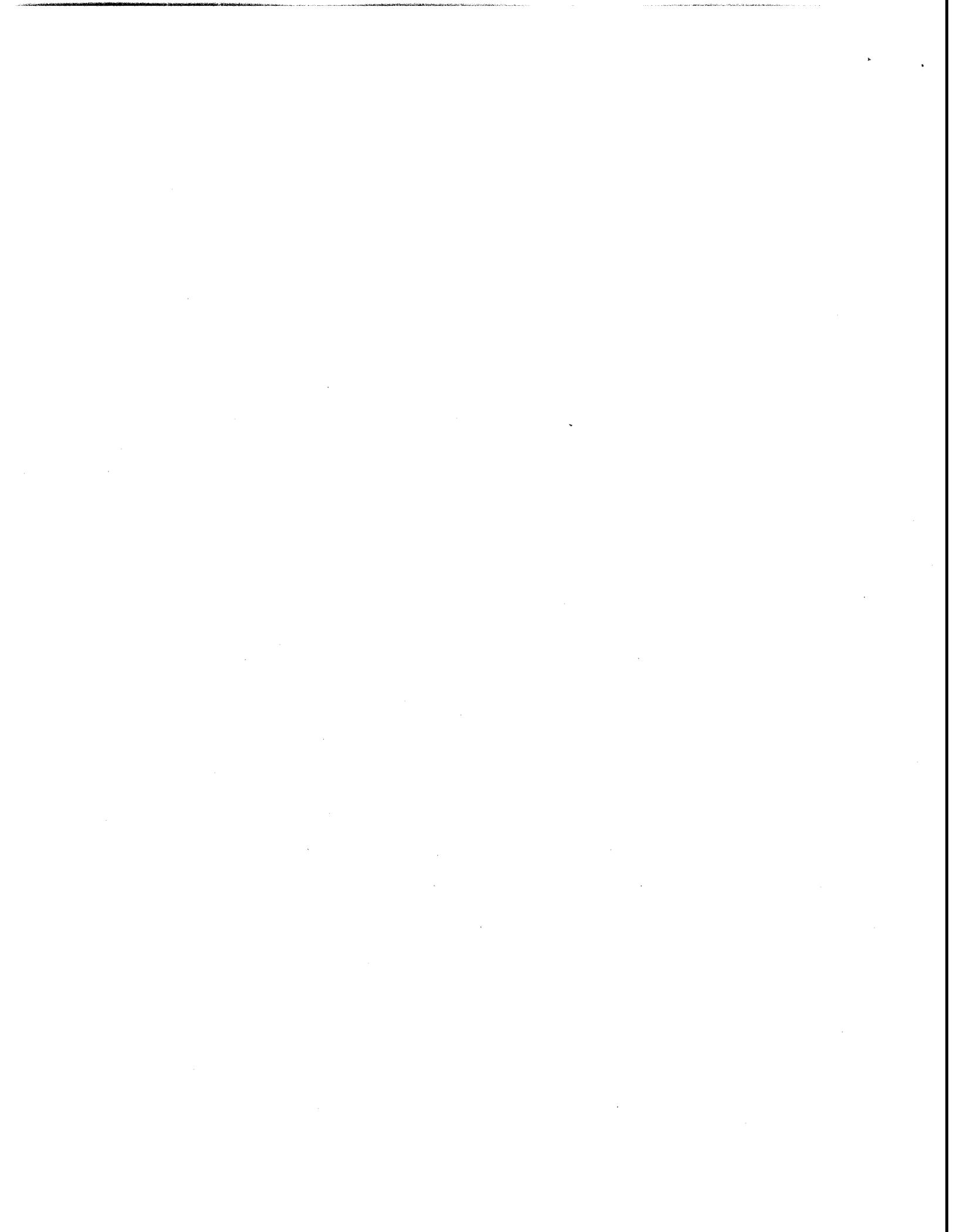
[REDACTED]

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 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, Los Angeles. 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. The director denied the application, finding that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director noted several inconsistencies between the applicant's testimony and the information that she provided on her Form I-687 as well as several deficiencies with the affidavits provided in support of her application.

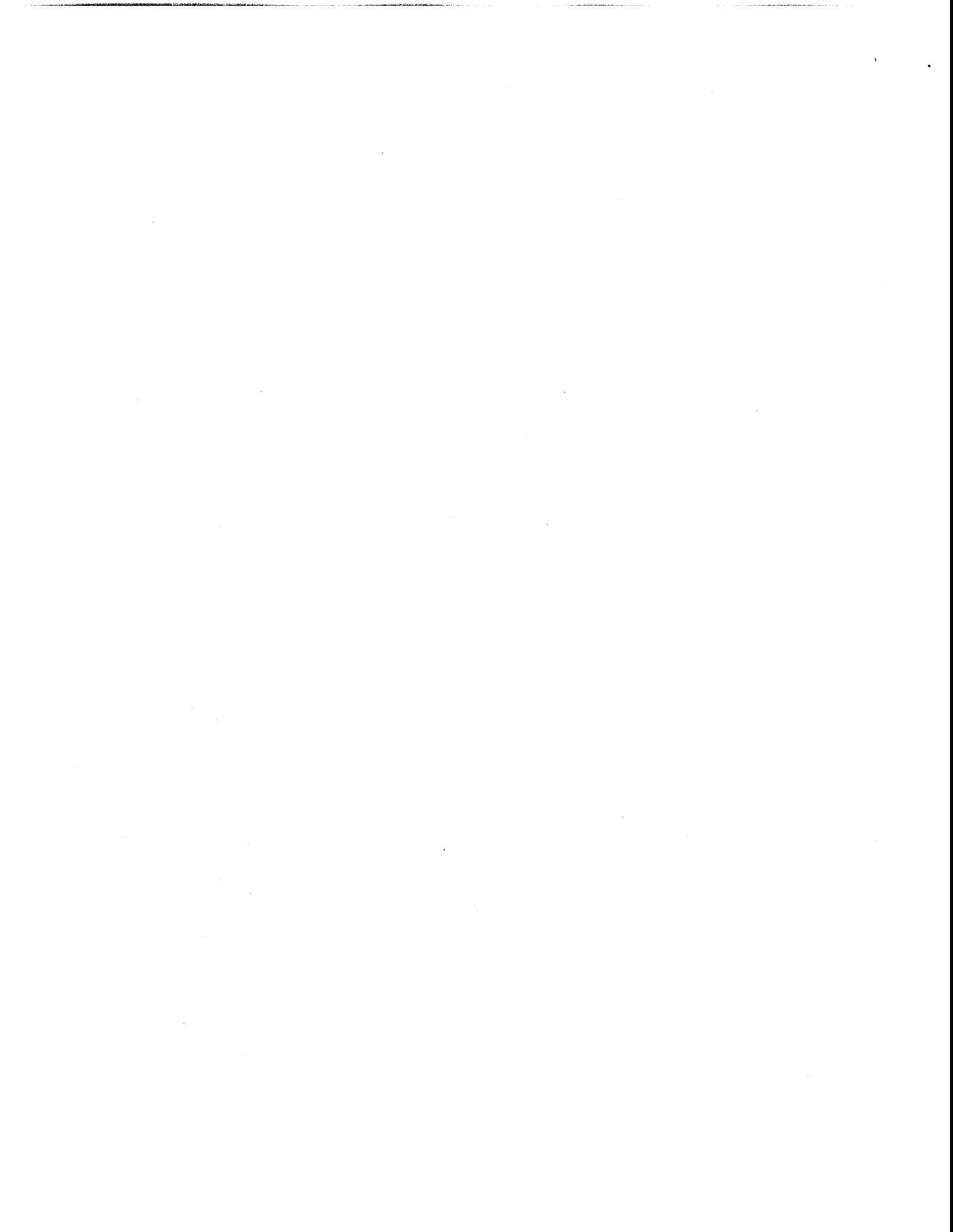
On appeal, the applicant, through counsel, asserts that she has established her unlawful continuous residence for the requisite time period. She indicates that the director failed to provide any reasons for discrediting the affiants' testimony and that the director considered testimony that concerns the period following the relevant period in making the determination of her eligibility. Further, she asserts that she had ineffective counsel in the preparation of her Form I-687 application.

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 t

applicant attempted to file a completed Form I-687 application and fee or was caused not to t al 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



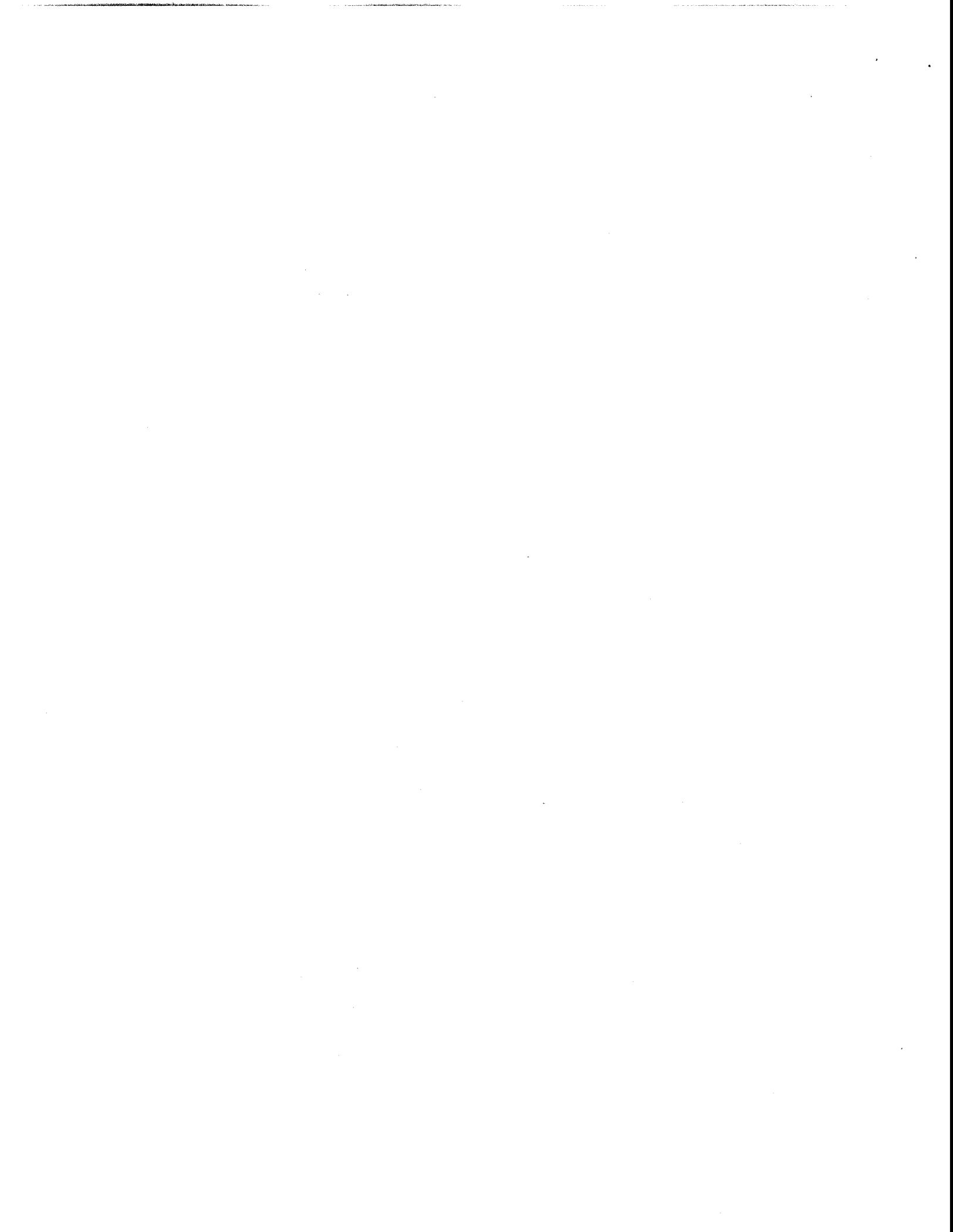
inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

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.

The issue in this proceeding is whether the applicant established that she: (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. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several affidavits and letters. The AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.



In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. The applicant's true identity is established pursuant to the requirements of paragraph (b)(4)(1) and (ii) of this section. The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirement of this paragraph, documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant. 8 C.F.R. § 245a.4(b)(4)(iii). In this case, the applicant has submitted evidence under several assumed names, including [REDACTED]

[REDACTED] Furthermore, the Federal Bureau of Investigation (FBI) fingerprint record indicates that the applicant's name is [REDACTED]. She has submitted a birth certificate under the name [REDACTED].

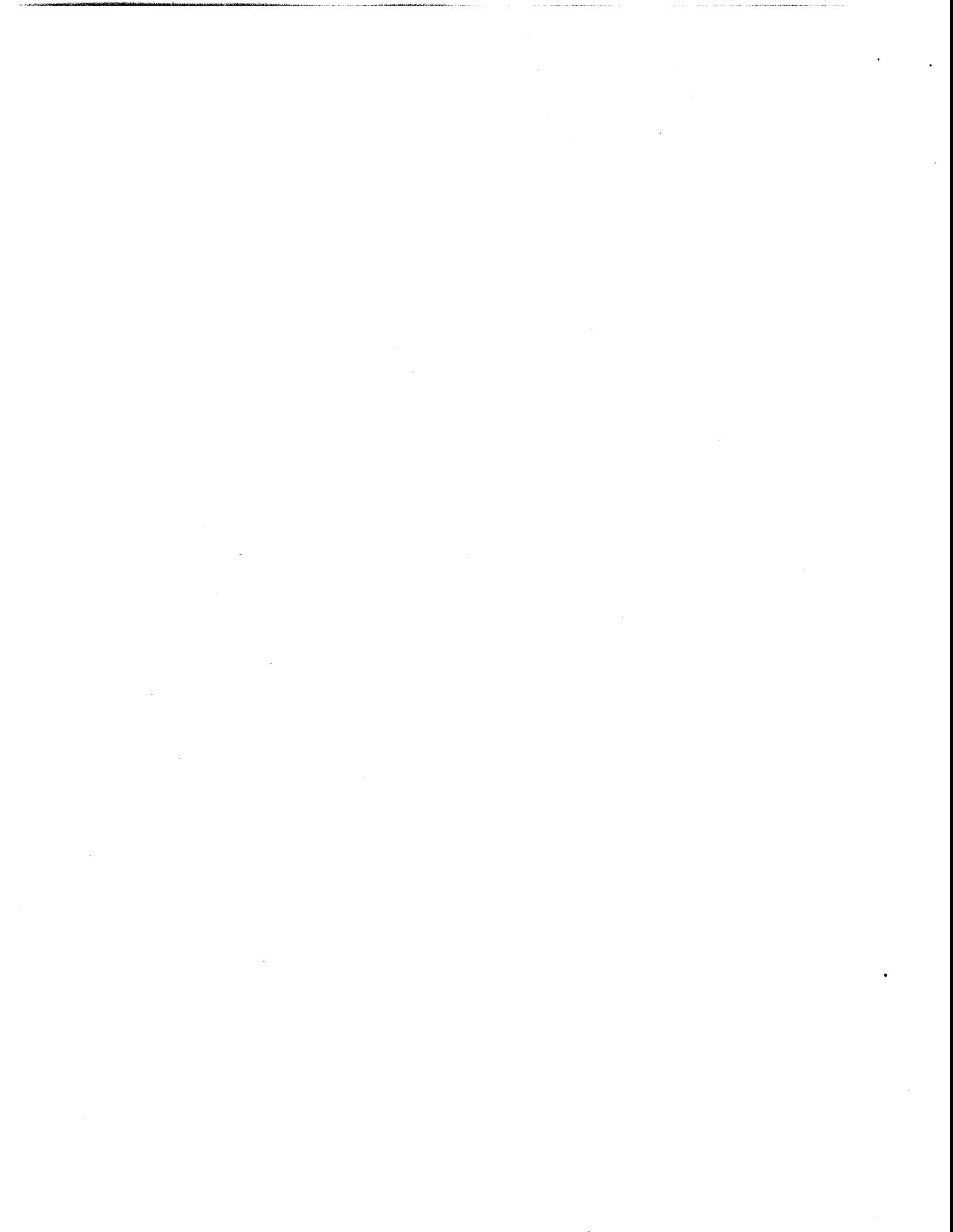
The record also reveals that on March 18, 1997 the applicant was apprehended attempting to enter the United States with false documents. She indicated that her [REDACTED] with a [REDACTED]. She was given voluntary departure and returned to Mexico. On February 3, 2001, the applicant was arrested again attempting to enter the United States. She claimed that her name was [REDACTED]. She indicated to officers that she had been living in the United States for 12 years, or since 1989. She was deported to Mexico. After reviewing the entire record, the AAO finds that the applicant has submitted materially inconsistent testimony and evidence regarding her entries to the United States, her identity, and her date of birth. These inconsistencies cast doubt on the reliability of all evidence submitted in support of her eligibility.

[REDACTED] requires an alien to establish that he or she is admissible to the United States as an immigrant in order to be eligible for temporary resident status. Section 245A(a)(4)(A) of the Act, 8 U.S.C. § 1255a(a)(4)(A). Section 212(a)(9)(A)(ii)(II) of the Act renders inadmissible aliens who departed the United States while an order of removal was outstanding and who seek admission within 10 years of the date of the alien's departure. Section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II). While the applicant has filed a waiver of this inadmissibility, the issue of the waiver is moot because the applicant has not met the requirements of eligibility for temporary resident status.

Furthermore, 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.

The applicant testified at her February 3, 2001 interview with USCIS that she was a lawful permanent resident, and she provided a false name and birthdate. Therefore, the applicant



willfully misrepresented a material fact when she was seeking entry to the United States. This misrepresentation of material fact renders her inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) as well.

On appeal, counsel for the applicant asserts that the applicant's entries are outside of the relevant period and therefore have no bearing on her eligibility. While the AAO agrees that the applicant's absences from the United States following the relevant period are not material to the issue of her continuous residence in the United States during the relevant period, her inconsistent testimony and misrepresentation cast doubt on the veracity of her testimony and her admissibility. As stated above, any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

In support of her eligibility, the applicant submits affidavits from the following individuals:

The affidavits contain many material inconsistencies. For example, [redacted] indicates that she met the applicant in April 1982 when the applicant was cleaning houses with her sister-in-law, however, the applicant does not indicate that she was employed prior to 1991. [redacted] indicate that they have known the applicant since October 1981 in Los Angeles, however, the applicant lived in Illinois from 1985 until 1986. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

In addition to the inconsistencies noted, the affidavits lack sufficient detail to be considered probative. Most affiants indicate that they met the applicant in 1981 in Los Angeles, however, most do not indicate how they date their acquaintance with the applicant or how frequently they saw the applicant during the relevant period.

On appeal, the applicant submits three additional affidavits in support of her application. The first affiant, [redacted] indicates that the applicant lived with her for two years from the end of 1986 until January 1989. She indicates their address was [redacted]. She does not provide any evidence of their residence such as lease agreements, utility bills or rental receipts.

[redacted] indicates that he met the applicant's husband in 1984 in Norwalk, California. He indicates that he and his wife would visit the applicant and her husband at their residence on [redacted].

[redacted] indicates that she met the applicant at [redacted] [redacted] 1981. She indicates that she saw the applicant frequently at church until 1984 when the applicant moved to Chicago.



To be considered probative and credible, witness affidavits must do more than simply state that an affiant 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 the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

Finally, the applicant, through counsel, indicates that during the filing of her original application, the applicant was represented by ineffective counsel and/or accredited representative. Any appeal or motion 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 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. [REDACTED] 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 evidence.

However, in this case, the AAO notes that the applicant is represented by licensed counsel on appeal and the AAO has taken the amended Form I-687 into account in adjudicating this appeal.

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.

Therefore, 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.

