

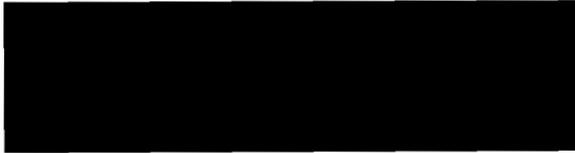
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



L₂

FILE:



Office: LOS ANGELES, CA

Date:

OCT 09 2009

MSC 01 317 60169

IN RE:

Applicant:



APPLICATION:

Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

The director found that the applicant had been present in the United States for at least part of the statutory period based on the entries which he made into this country as a nonimmigrant during the statutory period. Therefore, the director denied the application.

On appeal, the applicant indicated that the nonimmigrant entries which he made during the requisite period were obtained through fraud or mistake. Based on this, he asserted that his residence in the United States was at all times unlawful during the statutory period, and that he was otherwise eligible to adjust to permanent resident status under the LIFE Act.

The applicant indicated on the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), filed on April 3, 2007 that he would submit a brief or additional evidence to the AAO within 30 days. Over two years have passed since the submission of the Form I-290B, and the applicant has not provided further information. The AAO will consider the record complete.

As a preliminary matter, the AAO notes that the director found the applicant eligible for class membership under the LIFE Act. Also, on September 9, 2008 the court approved a Stipulation of Settlement in the class action *Northwest Immigrant Rights Project, et al. vs. USCIS, et al.*, 88-CV-00379 JLR (W.D. Was.) (NWIRP). Class members are defined, in relevant part, as:

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

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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.

NWIRP provides that 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 or her 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. Where an individual claims to have obtained his or her nonimmigrant status by fraud or mistake, the applicant bears the burden of establishing this.

The settlement agreement states further that once USCIS finds that the applicant is a class member, USCIS shall follow the general adjudicatory standards set forth at 8 C.F.R. § 245a.18(d)[the regulation relating to whether an applicant is at risk of becoming a public charge as analyzed under the Legal Immigration Family Equity (LIFE) Act of 2000] or at 8 C.F.R. § 245a.2(k)(4)[the regulation relating to whether an applicant is at risk of becoming a public charge as analyzed under the Immigration Reform and Control Act (IRCA) of 1986], whichever is more favorable to the applicant.

The AAO stated in its notice of intent to dismiss issued on September 3, 2009 that the record is not clear regarding whether the applicant is an NWIRP class member as enumerated above. In the rebuttal to the director's notice of intent to deny the applicant indicated that he first entered the United States on May 30, 1980 as a nonimmigrant. However, at the December 9, 2003 LIFE legalization interview, he indicated that he entered without inspection during May 1980. Later in that interview, the applicant modified his testimony to indicate that he entered with a nonimmigrant visa at that first entry. At the June 1, 1994 class membership interview, the applicant indicated that he entered with a nonimmigrant visa during both 1980 and 1981. Contemporaneous evidence in the record, such as the letter from Los Angeles Unified School District dated February 15, 1991, confirms that the applicant attended high school in Los Angeles, California during the September 1980 through May 1981 school year, and at that time he resided at [REDACTED]. Thus, the record supports the finding that the applicant was present and residing in the United States during the 1980-1981 school year. However, the record is not clear regarding: the date of his entry which occurred just prior to January 1, 1982, and whether that entry was made using a nonimmigrant visa or made without inspection. What is also unclear is, if that entry was made using

a nonimmigrant visa, whether his period of authorized stay subsequent to that entry expired prior to January 1, 1982 or whether he violated his status prior to January 1, 1982 in a manner that was known to the government.

The AAO explained in the notice of intent to dismiss that where an applicant is claiming that he made a pre-1982 nonimmigrant entry and that his period of authorized stay expired prior to January 1, 1982 or he violated his status in a manner known to the government prior to January 1, 1982, and the applicant has no documentary evidence of these claims, the AAO shall use as guidance instructions set forth in the NWIRP settlement. In the attachment to this settlement titled: Exhibit 2 Instructions and Class Member Worksheet at page 5, the NWIRP class member without documentary evidence of his nonimmigrant entry or credible declarations regarding this entry is instructed that he may submit a sworn statement. *See* copy of Exhibit 2 attached. The AAO informed the applicant that he could submit a similar sworn statement in response to the notice of intent to dismiss in order to support his claims that he entered the United States on a nonimmigrant visa for which the period of authorized stay expired prior to January 1, 1982 or the terms of which he violated in a manner that was known to the government prior to January 1, 1982. The AAO explained to the applicant that the sworn statement must specify: the U.S. Consulate where he applied for the pre-1982 visa; the approximate date that he received the nonimmigrant visa; the date that he used the visa to enter the United States; the location where he entered the United States using the nonimmigrant visa; the date on which his period of authorized stay expired; and a brief description of any activities that he engaged in consistent with the terms of the visa immediately after entering the United States.

The AAO also explained that if the applicant presented such statement and established that he entered as a nonimmigrant, and if this statement indicates that his period of authorized stay continued beyond January 1, 1982, the AAO would consider if he was required to file a quarterly address report with the Immigration and Naturalization Service, (INS, now USCIS), prior to January 1, 1982. There are no address reports in the record. Thus, if the applicant was required to file such report, then the AAO would find that he violated his nonimmigrant status in a manner that was known to the government prior to January 1, 1982, in keeping with the NWIRP settlement.

The AAO stated that if this office finds that the applicant committed immigration violations, such as failing to file an address report or working without authorization, prior to January 1, 1982, then the AAO will consider whether the nonimmigrant entries which he made after January 1, 1982, and documented in the record, were procured through fraud or mistake.

The applicant did not respond to the notice of intent to dismiss within the time allowed for reply as stated on that notice. Thus, he has not established that he entered as a nonimmigrant prior to January 1, 1982 and he has not established that his subsequent nonimmigrant entries were made by fraud or mistake. In addition, the applicant has not established that he is an NWIRP class member.

On appeal, the applicant indicated through counsel that the record establishes that he is eligible to adjust under the LIFE Act.

An applicant for permanent resident status under the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in any of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(CSS), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(LULAC), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993)(Zambrano). See 8 C.F.R. § 245a.10.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 through May 4, 1988. See LIFE Act § 1104(c)(2)(B) and 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 and is otherwise eligible for adjustment of status under this section. 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.12(e).

The regulation at 8 C.F.R. § 245a.2(b) provides in pertinent part:

- (b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

. . .

- (9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant, such entry being documented on Service Form I-94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.

- (10) An alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.

The ground of excludability at section 212(a)(19) of the Act has been replaced by the ground of inadmissibility listed at section 212(a)(6)(C)(i) of the Act, as amended.

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

Misrepresentation. – (i) 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See id.*

Documentary evidence may be in the format prescribed by USCIS regulations. *See id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. In evaluating the evidence, *Matter of E-M-* also states 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 or 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, 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, to deny the application or petition.

On or near September 26, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On August 13, 2001, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The director issued a notice of decision in which she denied the application because she determined that the applicant had not established by a preponderance of the evidence that he resided continuously in the United States in an unlawful status throughout the statutory period.

On appeal, the applicant indicated that the record establishes that he did reside in the United States in an unlawful status throughout the statutory period, that his unlawful status was known to the government prior to January 1, 1982, and that he is otherwise eligible to adjust under the late legalization provisions of the LIFE Act.

This office stated in the notice of intent to dismiss that the issues in this proceeding include whether the applicant is able to establish that he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988, that he is admissible to the United States and that he is otherwise eligible to adjust under the LIFE Act. Here, he has not met this burden.

The record indicates that the applicant represented himself as a lawful nonimmigrant upon admission to the United States during the statutory period on January 12, 1985, July 31, 1986, April 15, 1987, December 26, 1987, and during 1984 at San Ysidro, California on a date that is not legible in the entry stamp in the record. The applicant also represented himself as eligible for nonimmigrant status and he was issued a B-2 nonimmigrant multiple entry visa on February 27, 1984 and a Border Crossing Card on April 9, 1985. Yet, according to the claims which he made in this proceeding, his actual intent each time when applying for nonimmigrant status and upon returning to the United States during the requisite period was to return to an unrelinquished domicile, to work without authorization and to reside indefinitely in the United States. Thus, during the statutory period, the applicant procured entry into the United States by willfully misrepresenting a material fact. The applicant is not admissible under section 212(a)(6)(C)(i) of the Act based on these misrepresentations.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he is admissible to the United States. *See* 8 C.F.R. § 245a.12(e). The applicant might only overcome this particular ground of inadmissibility if he

applies for and secures a waiver for the ground of inadmissibility at issue in the matter. *See* 8 C.F.R. § 245a.18(c).

The AAO stated in the notice of intent to dismiss that, according to the record, the applicant has not submitted the Form I-690, Application for Waiver of Grounds of Excludability, which is the form he must file to request a waiver of the ground of inadmissibility set forth at section 212(a)(6)(C)(i) of the Act. This office provided the applicant an opportunity to file the Form I-690 with the director and to submit proof of that filing into the record, in response to the notice of intent to dismiss. The applicant did not reply to the notice of intent to dismiss. Thus, the applicant has not shown that he is admissible and he has not shown that he has properly filed a request for a waiver of the ground of inadmissibility to which he is subject with the director. The appeal will be dismissed on this basis.

The AAO stated in the notice of intent to dismiss that the record also includes the following adverse or inconsistent evidence regarding his claim that he resided continuously in the United States throughout the requisite period:

1. The Form I-687 that the applicant signed under penalty of perjury on September 26, 1990 on which he indicated that he was not residing in this country from February 1986 through September 1987. That is, at item 33, where the applicant was to list all his residences in the United States, he stated that: from May 1980 through January 1986, he resided at [REDACTED] [REDACTED] from October 1987 through April 1988, he resided at [REDACTED] and from May 1988 through the date that he signed that form, he resided at [REDACTED] [REDACTED]. The applicant did not list any other residences.
2. The Form I-687 that the applicant signed under penalty of perjury on July 8, 1993 on which he stated at item 33 that: from October 30, 1980 through November 12, 1985 he resided at [REDACTED] from November 1985 through June 1988, he resided at [REDACTED] [REDACTED]; from June 1988 through May 1989 he resided at [REDACTED] and from May 1989 through August 1991 he resided at [REDACTED] [REDACTED].
3. The 1993 Form I-687 indicates at item 36, where the applicant was to list all his employment in the United States since his first entry, that he did not begin working in the United States until July 1987, and that he worked at a business located in Southern California from July 1987 through the period during which, according to the 1990 Form I-687, he resided in Northern California. That is, the 1993 Form I-687 states that his first employment in the United States was at Z-Fish from July 1987 through August 1988. The Z-Fish address is not included on the 1993 Form I-687 but on the 1990 Form I-687 the Z-Fish address is listed as [REDACTED] [Los Angeles County]

California 90247. According to the 1993 Form I-687, after this the applicant worked at Ben's Tropical Fish from September 1988 through October 1990.² Then, the applicant was a self-employed fish tank servicer from November 1990 through June 1993, and a self-employed masseur from June 1991 through the date that he signed that form.

4. The 1990 Form I-687 states at item 36 that the applicant began working in the United States during 1982, and that he worked at: Starr Construction, Los Angeles, California from June 1982 through December 1985; Z-Fish, Gardena, California from February 1986 through October 1987; Flemings Co., (shipping), from November 1987 through March 1988; and at various construction jobs from May 1988 through the date that the applicant signed that form.
5. On the 1990 Form I-687 at item 35, where the applicant was to list all his absences from the United States since entry, he stated that he made five visits to his family and was absent during: February 1984; January 1985; July 1986; April 1987; and November/December 1987.³ In his sworn statement dated November 1, 1990, the applicant stated that he departed the United States on November 13, 1987 and attempted to re-enter on December 26, 1987. The applicant indicated that INS questioned him and determined that he had been working without authorization and that he had an unlawful residence in the United States. INS then allowed the applicant to return to Mexico via voluntary return.⁴ The applicant re-entered the United States on December 27, 1987.⁵
6. The Frank's Auto Service receipt in the record which indicates that the applicant paid to have his automobile serviced in the United States on December 2, 1987, a date that falls during the period that the applicant indicated he was absent from this country.
7. A postcard that begins with the salutation "[REDACTED]" which was apparently received by the applicant at an address in Mexico during June 1985.

² This company name is written Ben's Tropical Fish on the Form G-325A, Biographic Information, signed on August 6, 2001 and as Benis Tropical Fish on the 1993 Form I-687. In this analysis, the AAO will refer to this company as Ben's Tropical Fish.

³ The applicant left blank the section of the 1993 Form I-687 where he was to list all his absences from the United States.

⁴ The applicant indicated that he was "deported" to Mexico on his sworn statement. However, given that he returned to Mexico the same day that INS stopped him, the record indicates that he did not enter deportation or removal proceedings, but was instead returned via voluntary return without any formal hearing in the United States.

⁵ November 13, 1987 through December 27, 1987 is an absence of 44 days.

However, the 1990 Form I-687 indicates that the applicant was not absent from the United States during June 1985.

The applicant did not provide a consistent account of where he was residing and where he was employed during the requisite period. For example, according to the record, the applicant resided in Oakland in Northern California from October 1987 through April 1988, and worked in Oakland from November 1987 through March 1988. The evidence also states that from November 1985 through June 1988, the applicant resided in Los Angeles, California, and that he worked at Z-Fish in Gardena in Southern California from July 1987 through August 1988. The applicant did not provide a consistent account of when he was absent from the United States. For example, he provided a receipt which indicates that he had his car serviced in the United States during a period that he was absent from the United States. He also provided a postcard which indicates that he received a postcard in Mexico during the period that his 1990 Form I-687 indicates that he was in the United States.

The AAO stated in the notice of intent to dismiss that these discrepancies cast doubt on the authenticity of all the evidence of record, including the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

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

Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States throughout the statutory period.

In the notice of intent to dismiss, the AAO stated that the affidavits and written statements in the record are not independent, objective evidence. They are not sufficient to overcome the discrepancies in the evidence which have been summarized here and they are not probative in this matter.

The applicant did provide evidence that he attended classes in the United States during the 1980-1981 school year. He submitted a card which allowed him access to the Los Angeles Salvation Army Youth and Family Center. The card does not list an issue date, only an expiration date which falls during the requisite period. The applicant provided envelopes which were mailed to him in the United States during the statutory period. He submitted a copy of his 1988 Form W-2, Wage and Tax Statement. The applicant provided hand-written receipts apparently issued by businesses in the United States and made out to him during the statutory period, such as the December 2, 1987 automobile service receipt referred to earlier. The AAO stated in the notice of intent to dismiss that the applicant had failed to provide contemporaneous evidence of having resided in the United States *continuously* from a date prior to January 1, 1982 and through May 4, 1988 which is sufficient to

overcome the inconsistencies in the evidence discussed in this analysis. The applicant failed to provide additional evidence in response to the notice of intent to dismiss. Thus, the applicant has failed to establish continuous residence in an unlawful status in the United States throughout the statutory period. The appeal will be dismissed on this basis.

The applicant has not established that he is admissible or that he has properly filed a request for a waiver of the ground of inadmissibility to which he is subject. He has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988.

The applicant is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act for the reasons stated above, with each considered as an independent and alternative basis for denial.

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