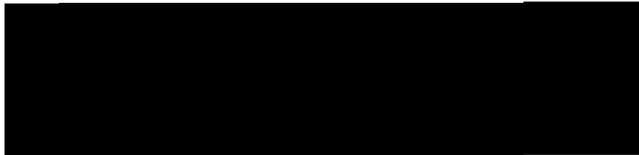




U.S. Citizenship
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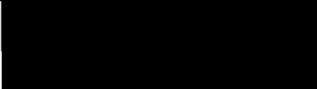
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PUBLIC COPY



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FILE:



Office: FAIRFAX, VA

Date:

FEB 26 2010

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).

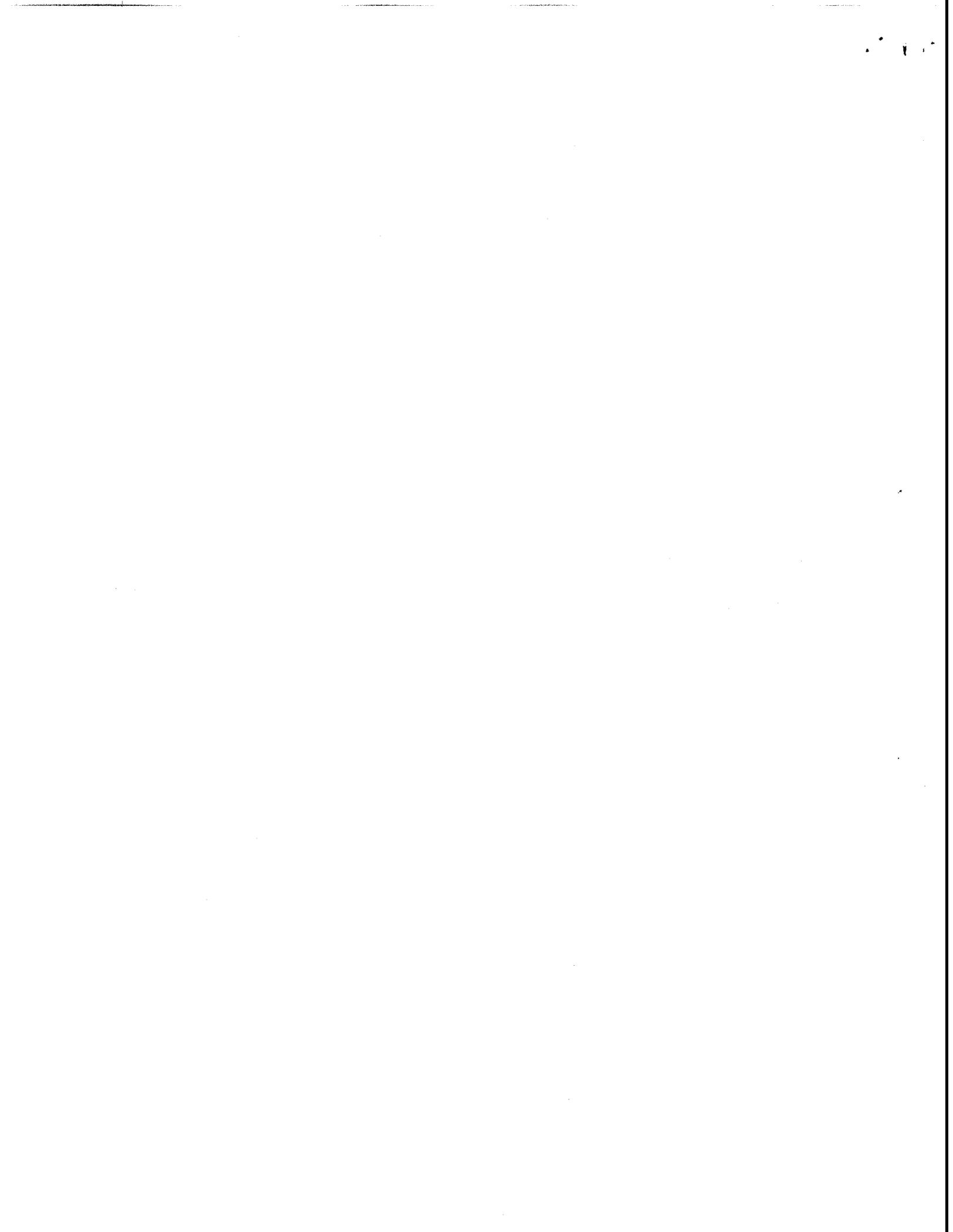
ON BEHALF OF APPLICANT:



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, Fairfax, Virginia, 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 lawfully 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. The director also stated that the applicant failed to establish his claim that he resided continuously in the United States throughout the relevant 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. 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 also asserted that the director had not identified any true inconsistencies in his evidence relating to continuous residence throughout the relevant period.

For example, the applicant stated that from 1986 through 1989, he was working under the auspices of [REDACTED] when he served as a medical interpreter assisting Saudi kidney transplant patients in Los Angeles, California. He indicated that the preponderance of the evidence supports his claim that there is no discrepancy in the fact that the Saudi Medical Office in Washington, D.C., rather than an office in Los Angeles, provided an employment verification letter for this period.

The AAO issued a notice of intent to deny in this matter on October 13, 2009 in which this office stated that it concurs with this point made by the applicant. The applicant has overcome any suggestion made by the director that the fact that his employment verification letter was written by the Saudi Medical Office in Washington, D.C. undermines his claim that he worked for this agency in Los Angeles during 1986 through 1989.

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).



As a preliminary matter, the AAO notes that 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 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

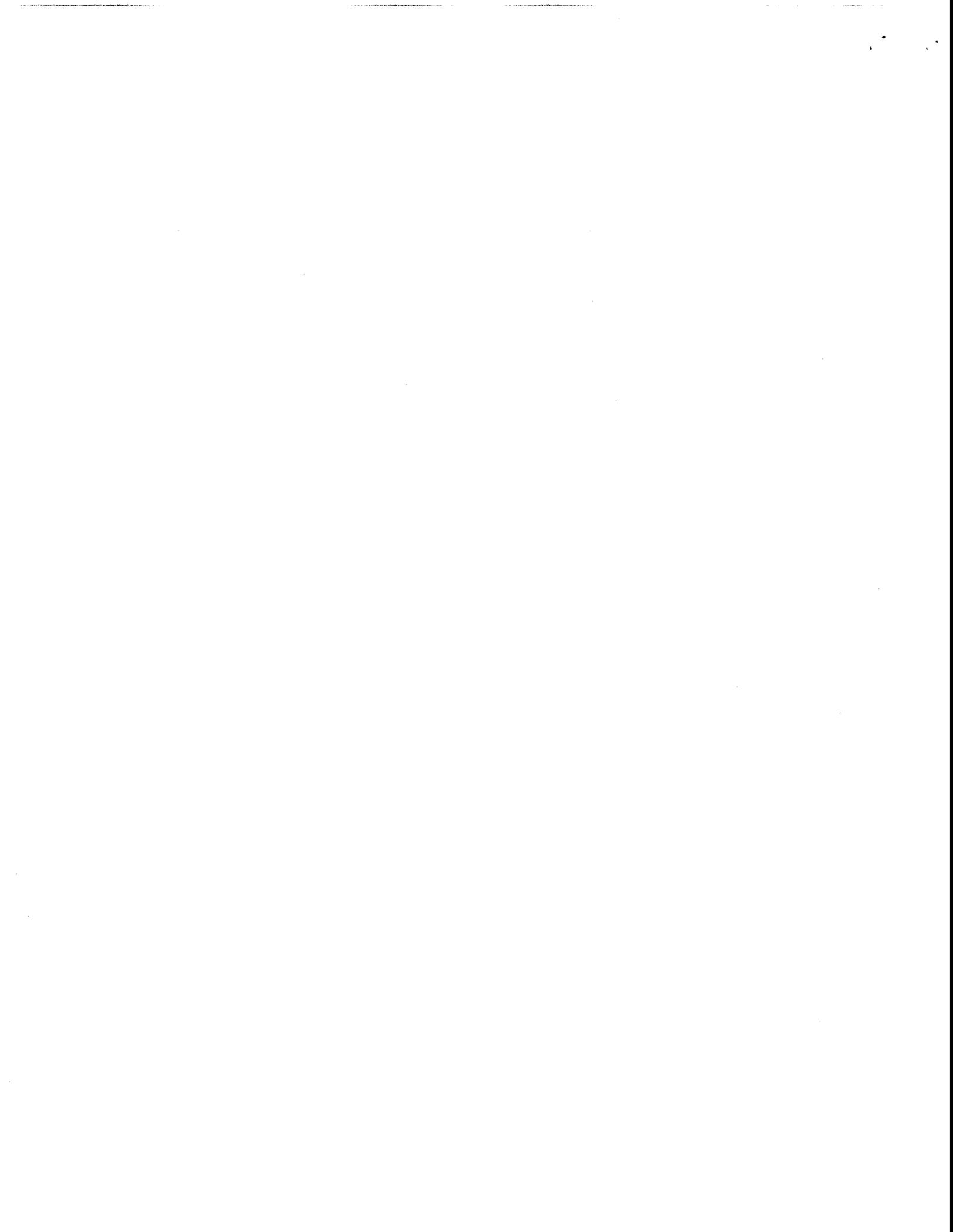
(B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization with an INS officer, or agent acting on behalf of the INS, including a QDE, under § 245A of the INA, but were advised that they were ineligible for legalization, or were refused legalization application forms, and for whom such 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,

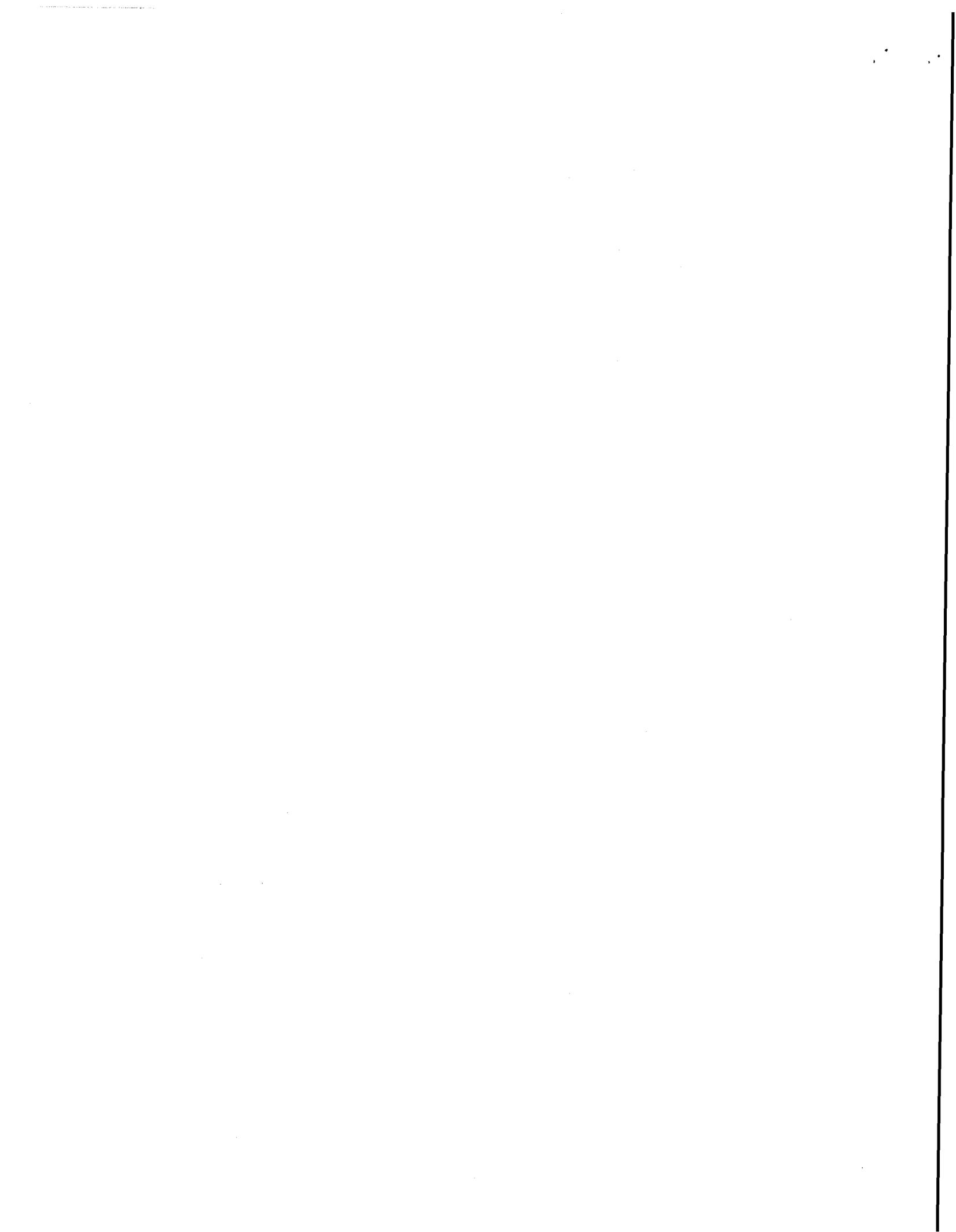


- warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government.
- (2) Persons who violated the terms of their nonimmigrant visas before January 1, 1982, for whom INS/DHS records for the relevant period (including required school and employer 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 late 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 notice of intent to dismiss stated that the record is not clear regarding whether the applicant is an NWIRP class member as enumerated above. Throughout this proceeding, he has asserted that he entered the United States during 1978 and 1981 as a nonimmigrant F-1 student. According to the

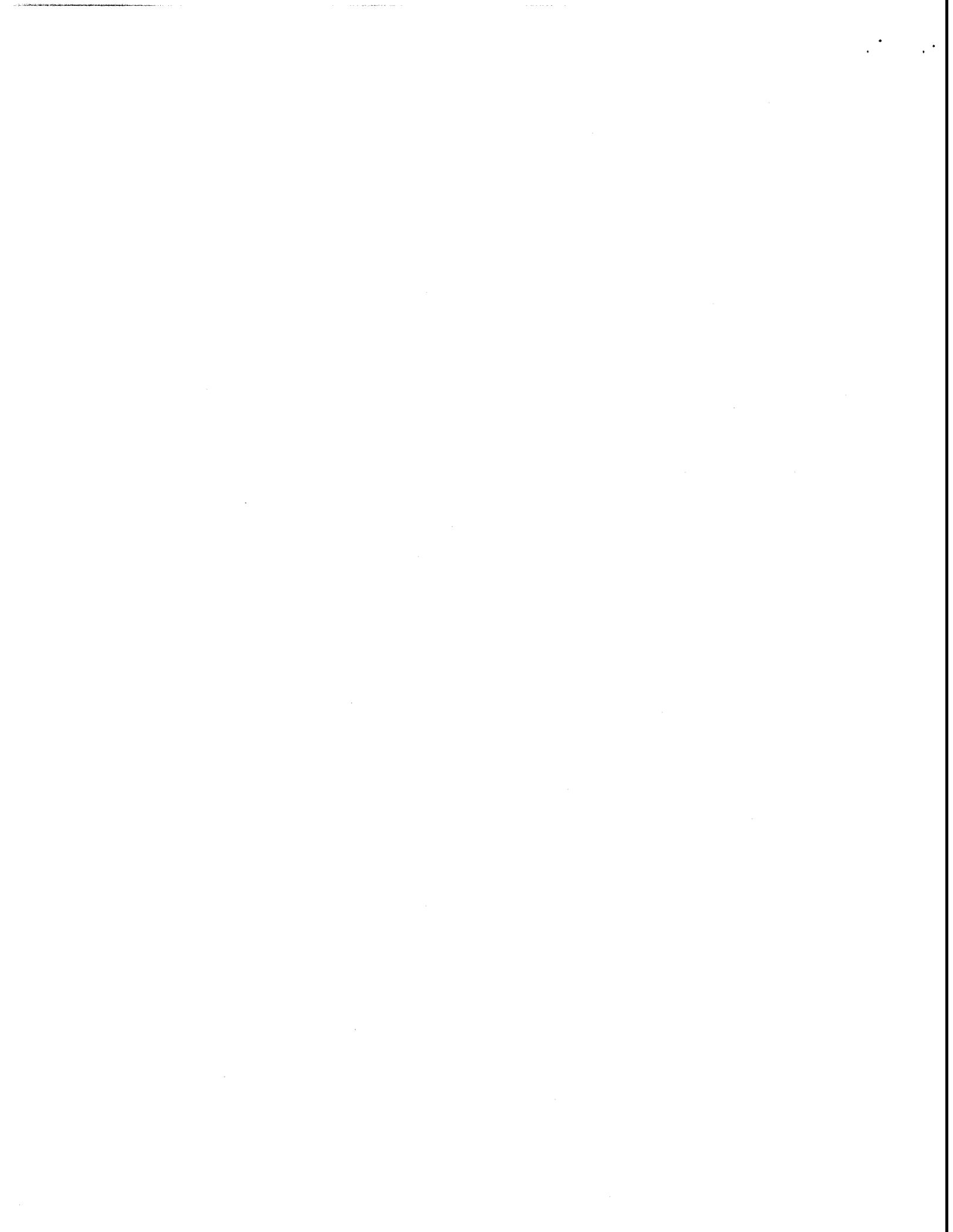


statements which he made on the Form I-687, Application for Temporary Resident Status, his August 1981 F-1 entry was his last entry prior to January 1, 1982. Contemporaneous evidence in the record, such as his transcript from Brooklyn College, confirms that he attended college in New York during 1979, 1980, 1981 and 1982. However, there is no evidence in the record of any of his nonimmigrant entries during the relevant period, including his stated August 1981 F-1 entry.

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 that 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 notice of intent to dismiss stated that the AAO would also allow the applicant to submit a similar sworn statement in response to this notice 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 whose terms he violated in a manner that was known to the government prior to January 1, 1982. 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.

In the notice of intent to dismiss, the AAO stated that if the applicant presents such statement and establishes that he entered as a nonimmigrant, and if this statement indicates that his period of authorized stay continued beyond January 1, 1982, the AAO will 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 he was required to file such report, then the AAO will 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.

If the AAO 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 this office will consider whether the nonimmigrant entries which he stated that he made after January 1, 1982 were procured through fraud or mistake. There is no indication in the record that the applicant ever acknowledged to U.S. officials that he had committed any immigration violations and asked to have his lawful status properly reinstated. Also, when analyzing whether his nonimmigrant entries, made during the requisite period, were obtained through fraud or mistake, the AAO will take into account that according to statements made in this proceeding his nonimmigrant entries made subsequent to January 1, 1982 were made with an intent to return to an unrelinquished domicile and to reside indefinitely in the United States.



The notice of intent to dismiss stated further that if the applicant demonstrates that he was in unlawful status in a manner that was known to the government prior to January 1, 1982 and that his subsequent nonimmigrant entries were made by fraud or mistake, the AAO would find that he had established that his presence in the United States during the requisite period was not lawful.

The applicant did not reply to the notice of intent to dismiss. Thus, the AAO finds that the applicant has not demonstrated that he is an NWIRP class member. In turn, he has not established that he was present in the United States unlawfully before 1982, and that unlawful status was known to the government as of January 1, 1982. Thus, the applicant has not shown continuous unlawful residence throughout the requisite period. The appeal must be dismissed on this basis.

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.

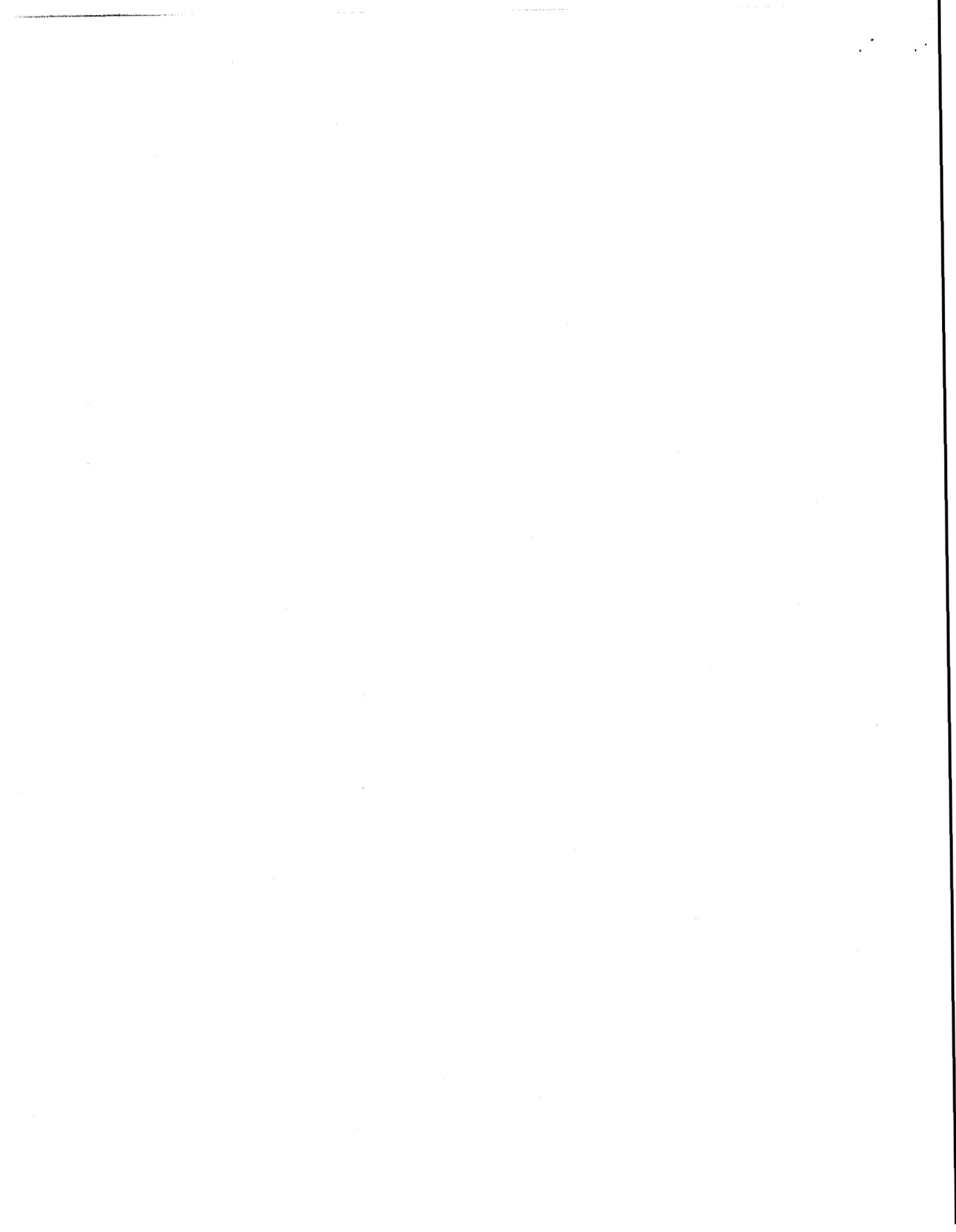
The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of “[a]ny other relevant document(s).” See 8 C.F.R. § 245a.14.

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.

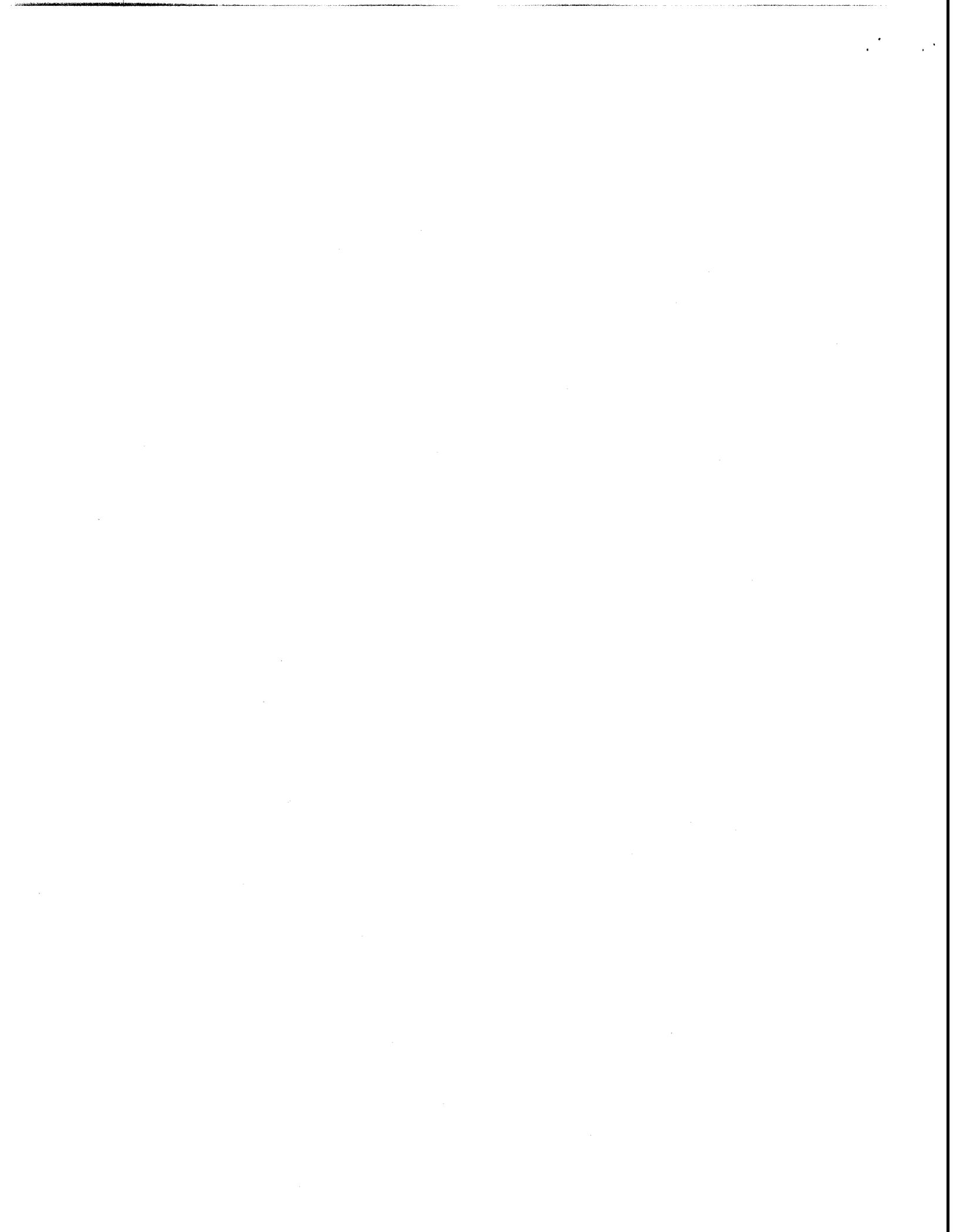
The ground of excludability at section 212(a)(19) of the Act has been replaced by the ground of inadmissibility listed at section 212(a)(6)(C)(i) of the Act, as amended.

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.

An applicant who has been convicted of a felony or of three or more misdemeanors committed in the United States is not eligible to adjust to lawful permanent resident status under the LIFE Act. *See* 8 C.F.R. § 245a.18(a)(1). A misdemeanor includes any offense which is punishable by imprisonment of a term of one year or less, except that it shall not include offenses for which the maximum sentence is five days or less. *See* 8 C.F.R. § 245a.1(o). A felony is a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any, except that when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less. *See* 8 C.F.R. § 245a.1(o).

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.*

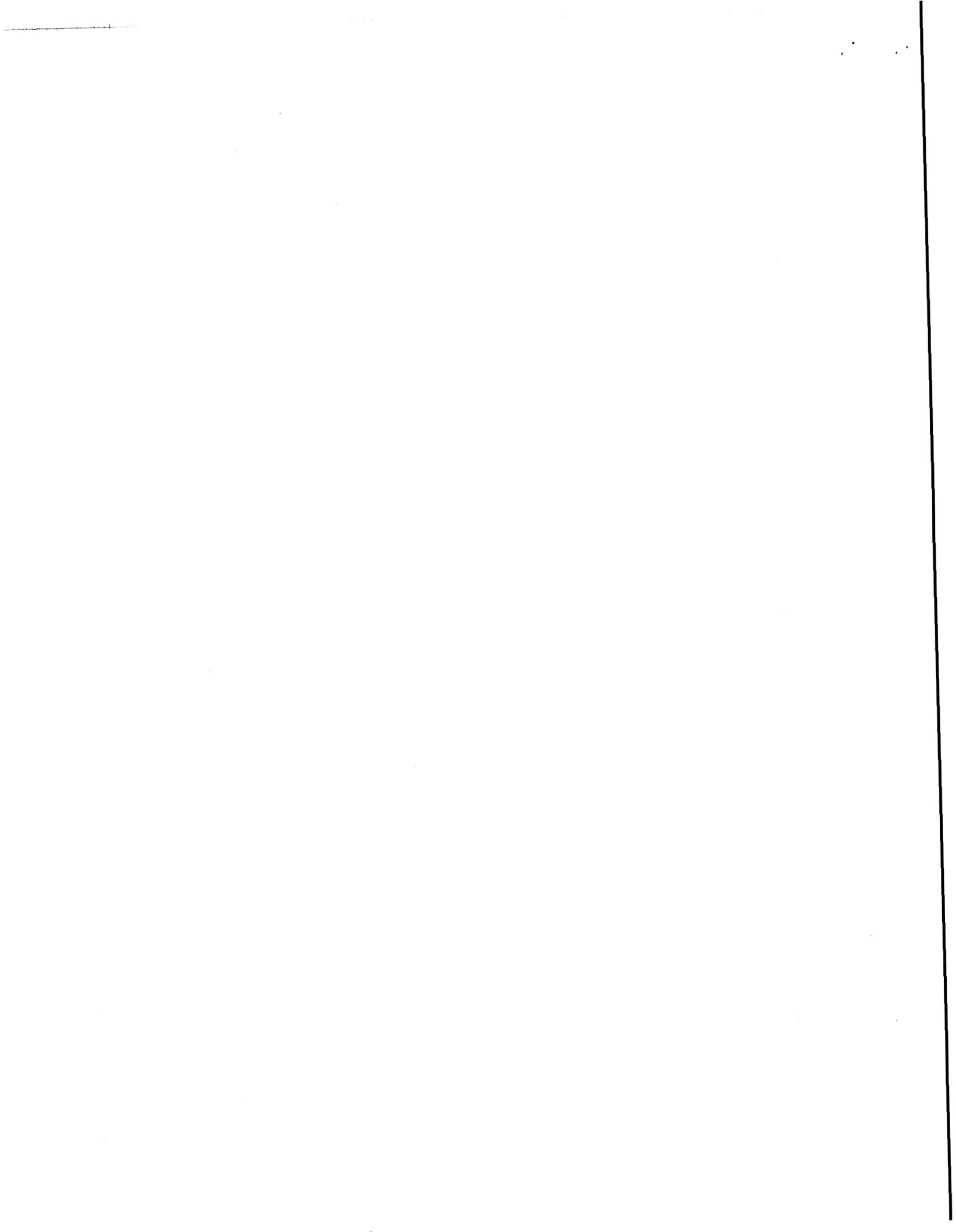
The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See id.*

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.

There is no evidence in the record that the applicant applied for class membership in a legalization class-action lawsuit. On December 22, 2006, the applicant 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 and that he is otherwise eligible to adjust under the late legalization provisions of the LIFE Act.

At issue in this proceeding is: whether the applicant submitted, prior to October 1, 2000, a written claim for class membership in a legalization class action lawsuit; whether he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988; whether he is admissible to the United States; and whether he is otherwise eligible to adjust under the LIFE Act.

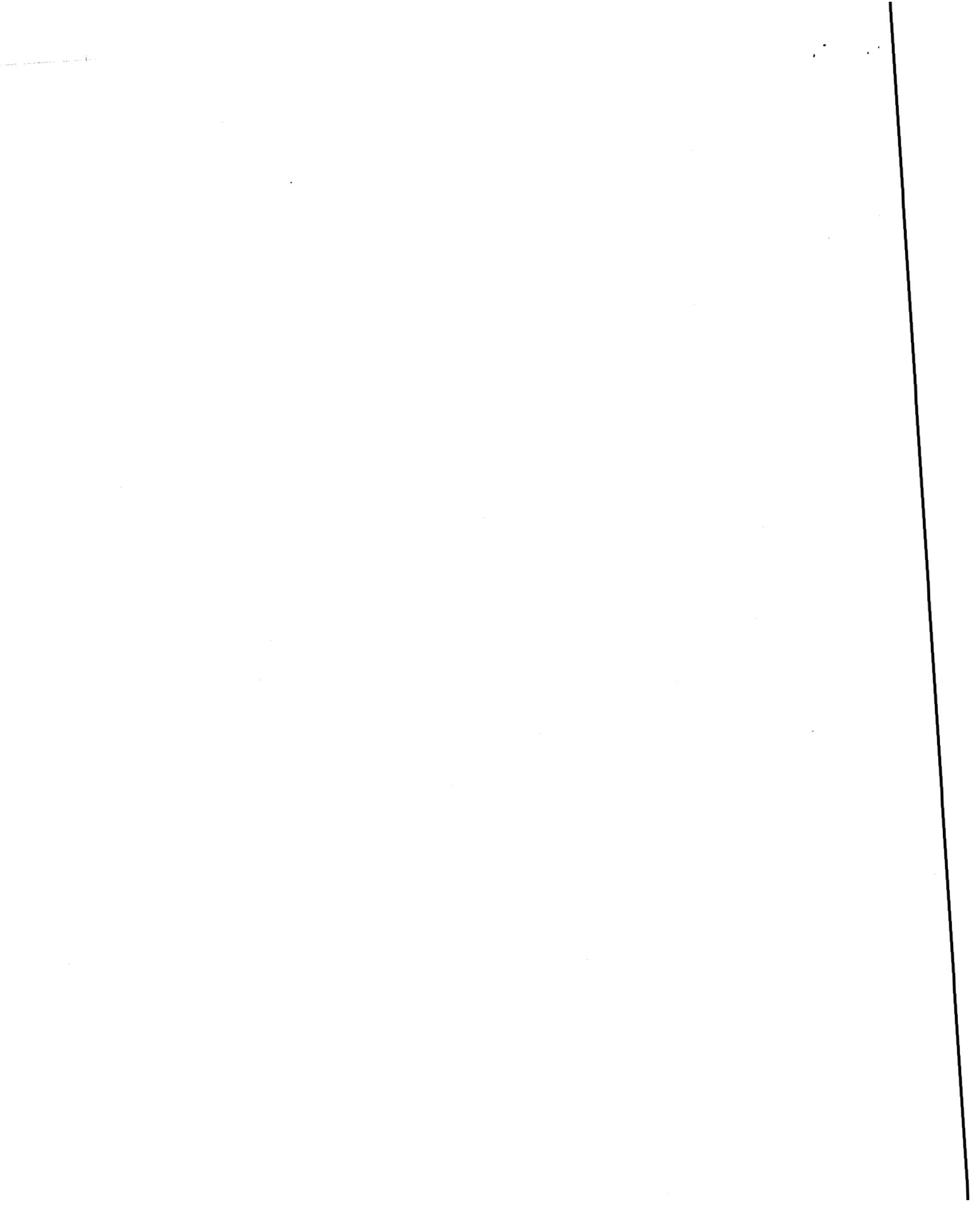
The applicant has stated that he represented himself as a lawful nonimmigrant upon admission to the [REDACTED]. According to his testimony, [REDACTED] and he was issued a B-2 nonimmigrant visa in Khartoum during 1985. Yet, according to the claims which he made in this proceeding, his actual intent when applying for nonimmigrant status in 1985 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, the record indicates that during the statutory period, he procured entry into the United States by willful misrepresentation of material facts. The AAO stated in the notice of intent to dismiss that based on these misrepresentations the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 notice of intent to dismiss stated 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. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO 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 deny. The applicant did not reply to the notice of intent to deny. Thus, the applicant has not shown that he is admissible and he has not shown that he has filed with the director a properly completed request for a waiver of the ground of inadmissibility to which he is subject. The appeal must be dismissed on this basis.

The notice of intent to dismiss stated that the record also includes the following adverse or inconsistent evidence regarding the applicant's claim that he resided continuously in the United States throughout the requisite period and that he is otherwise eligible to adjust under the LIFE Act:



1. On May 11, 1998, the Inglewood, California Police Department arrested the applicant and charged him with petty theft. There is no indication in the record that he ever submitted proof regarding whether or not this charge led to a conviction which might impact his eligibility in this matter, whether the charge was dropped, etc.
2. There is no assertion on the applicant's part or any other type of evidence in the record that, prior to October 1, 2000, he filed a written claim for class membership in a legalization class action lawsuit.
3. The Form I-687 that the applicant signed under penalty of perjury on December 28, 2005 on which he indicated that he was absent from the United States: August 1981 through October 1981; January 1985 through March 1985; January 1986 through February 1986; and April 2002 through May 2002. He indicated that these were his only absences since January 1, 1982.
4. The applicant's testimony from the LIFE late legalization interview at which he indicated that he was absent from the United States for two weeks during the summer of 1982; that he returned to Sudan for one month during 1984; that he returned to Sudan for one month during 1985; that he returned to Sudan for three to four weeks during 1986; and that he was absent from the United States during April/May 2002.
5. The applicant's December 14, 2007 sworn statement in the record in which he specified that after his absence in 1985, he returned to the United States from Sudan on March 25, 1985.

The applicant did not provide a consistent account of when he was absent and for how long he was absent from the United States during the relevant period. For example, according to his statements on the Form I-687, he departed the United States in January 1985 and returned in March 1985. In his December 14, 2007 sworn statement, he specified that in 1985 he returned to the United States on March 25, 1985. An absence from January 1985 through March 25, 1985 would necessarily be an absence of more than 53 days.² Yet, at the LIFE late legalization interview, the applicant testified that he was only absent for one month during 1985. Also on the Form I-687, the applicant failed to list his 1982 and 1984 absences, even though the form required him to list all his absences since January 1, 1982.

The notice of intent to dismiss pointed out that these discrepancies cast serious 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.

² There is no indication in the record that the applicant was unable to return to the United States within 45 days due to emergent reasons.



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.

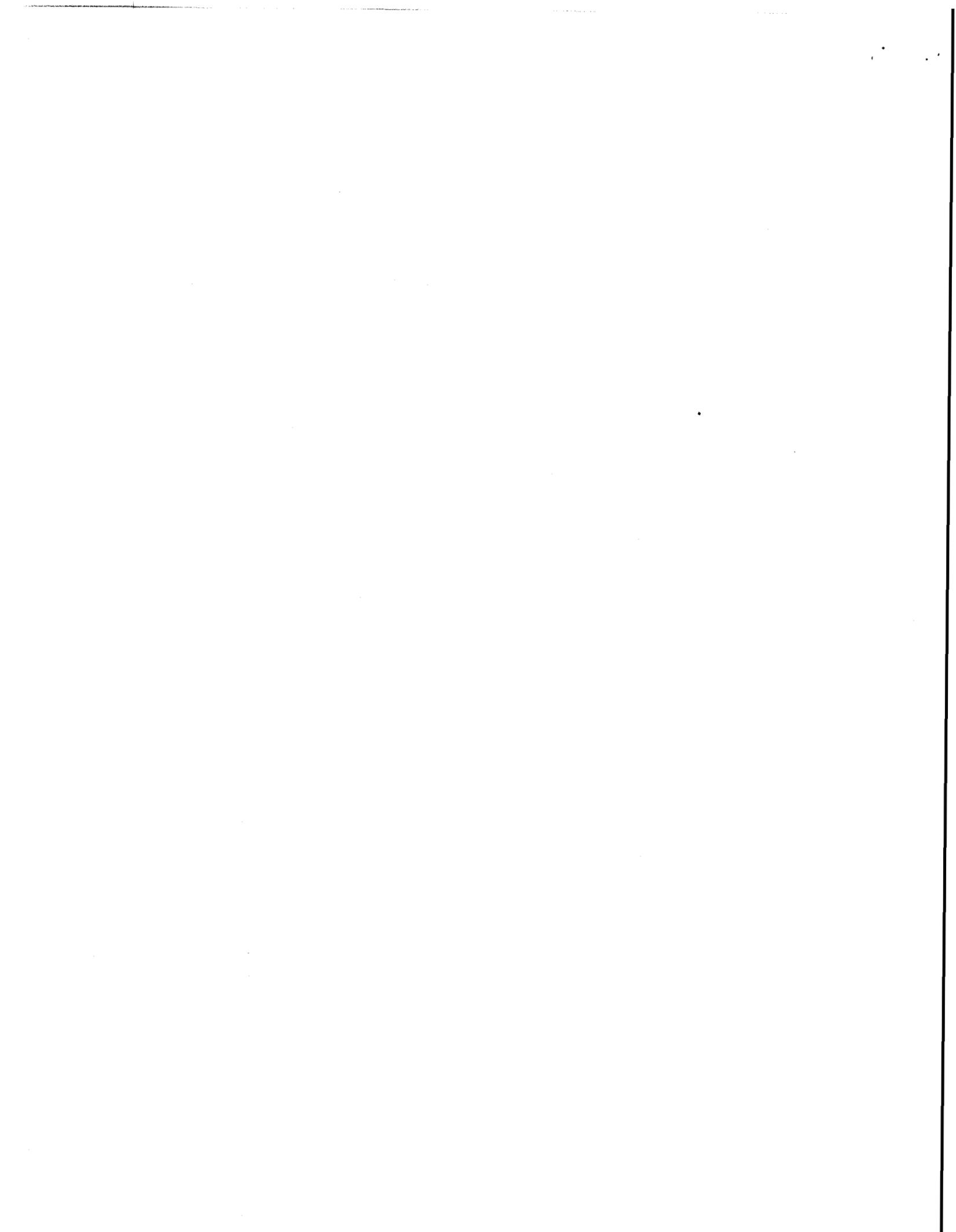
The AAO stated in the notice of intent to dismiss that the statements and affidavits which the applicant has submitted into the record are not independent, objective evidence. They are not sufficient to overcome the discrepancies in the evidence which have been summarized here and they are not probative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

The contemporaneous evidence in the record such as transcripts from 1982, a bank statement from February 1988, a gas bill and doctor's bill from October 1985 and rent receipts from 1986 do not address the apparent discrepancy in the record regarding, for example, whether the applicant broke his continuous residence in the United States in 1985 by being absent for more than 45 days in one single absence.

The AAO afforded the applicant the opportunity to provide, in response to the notice of intent to dismiss, evidence that might overcome this discrepancy in the record. The applicant did not reply to the notice of intent to dismiss. Thus, in this respect as well, the applicant has not established that he resided in the United States continuously from a date prior to January 1, 1982 and through May 4, 1988.

There is no evidence in the record that prior to October 1, 2000 the applicant submitted a written request for class membership in any relevant legalization class action lawsuit. The applicant did not provide such evidence in response to the notice of intent to dismiss, as requested. The applicant is not eligible to adjust to permanent resident status under the LIFE Act on this basis as well. The appeal will also be dismissed on this basis.

The notice of intent to dismiss stated that this office needs a certified copy of the court disposition relating to the charge filed against the applicant on May 11, 1998 to process this appeal. This office also listed in that notice various steps that the applicant should take to obtain documentation related to this charge if he was unable to obtain the court disposition. The applicant did not provide any evidence in response to the notice of intent to dismiss to establish that the charges brought against him did not lead to a conviction that renders him ineligible in this matter. According to the regulation set forth at 8 C.F.R. § 103.2(a)(13)(i), whenever an applicant does not submit requested material necessary for the processing and approval of a case by the required date, the matter may be summarily dismissed as abandoned. The applicant was afforded 60 days to submit this requested material and he failed to provide any reply. The AAO will dismiss this appeal on this basis as well.



The applicant has not established continuous, unlawful residence in the United States from a date prior to January 1, 1982 through May 4, 1988. He has not established that he is admissible to the United States or that he has filed with the director a properly completed request for a waiver of the grounds of inadmissibility to which he is subject. He has not established that he submitted a written application for class membership in the CSS, LULAC, or Zambrano class action. The applicant has not submitted requested documentation necessary for the processing and approval of this case, needed to establish that the charge brought against him in May 1988 did not lead to a conviction that renders him ineligible. The applicant is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act for these reasons, with each considered as an independent and alternative basis for denial.

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



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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS PROJECT,) Case No. 88-379R
ET AL.,)
Plaintiffs,) Exhibit 2
vs.) INSTRUCTIONS AND CLASS MEMBER
U.S. CITIZENSHIP AND IMMIGRATION) WORKSHEET
SERVICES, ET AL.,)
Defendants.)
_____)

INSTRUCTIONS

The attached Class Member Worksheet should be completed by persons who believe they are *IAP/NWIRP* class members and who wish to apply to legalize their status under the 1986 Immigration Reform and Control Act.

Use this form if (1) the Immigration and Naturalization Service ("INS") or a Qualified Designated Entity ("QDE")² rejected your application and filing fees for legalization or "amnesty" between May 5, 1987 and May 4, 1988; or (2) you filed a legalization application during the 1987-88 application year, but your application was denied (or your temporary residence was revoked or proposed for revocation). You may, but are not required to, use this form if you filed a legalization application during the 1987-88 application year, but your application has still not been decided, or you have an appeal of a denial of your timely application that is still pending at the Administrative Appeals Office (AAO). You may submit whatever additional evidence you have to support your application to the United States Citizenship and Immigration Services ("USCIS"), and the your application will be adjudicated.

² QDEs were usually community-based non-profit organizations (such as Catholic Charities) that were authorized to accept amnesty applications for the INS.



1 You may consult with an accredited community organization, church group or lawyer to
2 help you fill out this form.

3 **The benefits of class membership.**

4 The primary benefit of class membership is that you will be able to apply for legalization
5 and receive a decision based upon specified legal standards.

6 The basic issue asserted by *IAP/NWIRP* class members is that during the 1987-88
7 legalization program the INS or QDE concluded that they were ineligible for legalization
8 because their unlawful status was not "known to the government" prior to January 1,
9 1982.

9 In *IAP/NWIRP*, it was argued that students and other "nonimmigrants" violated their
10 status whenever they failed to report their addresses to the INS or when they failed to
11 take the required number of units at school. It was argued that such violations were in all
12 likelihood known to the government, precisely because the required reports were not
13 made or because schools were required to report foreign students whenever they failed to
14 take the required number of units. It was argued that a pre-1982 violation of status was
15 presumptively "known to the government" if you failed to file address reports, failed to
16 maintain full-time student status, or worked without authorization. Class members who
17 obtained a visa or were reinstated to lawful status after January 1, 1982, based upon a
18 false statement may also apply for consideration under the terms of this agreement.

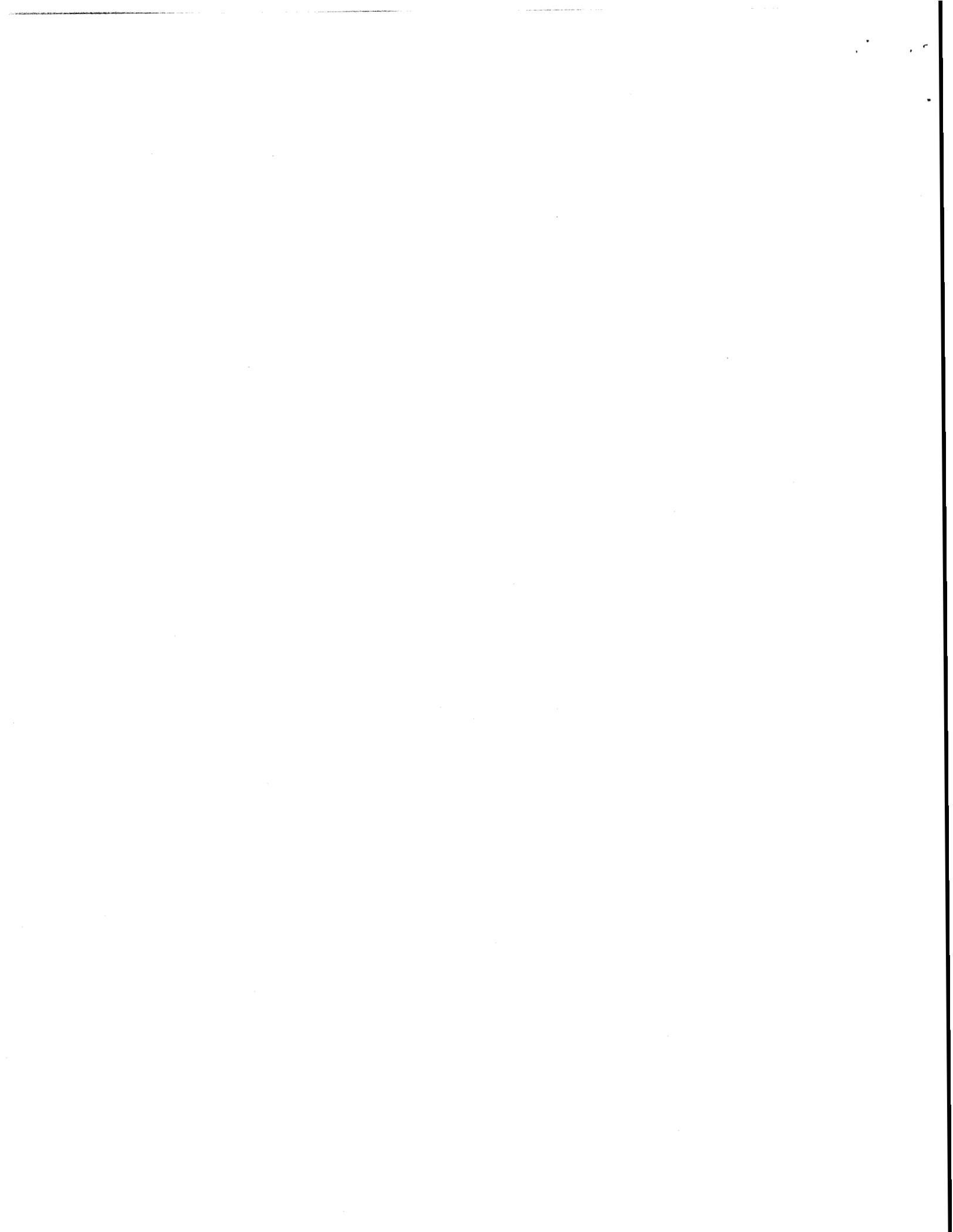
16 Class members whose legalization applications are approved are first granted
17 "Temporary Resident Status." Eighteen months later, these class members may apply for
18 permanent resident status. In addition the spouses and minor, unmarried children (who
19 arrived in the United States before 5/4/1988) of *approved* applicants may be eligible for
20 family unity benefits (work authorization and a stay of removal) while they wait to
21 immigrate through their newly legalized family member.

21 In addition, class member are entitled to work authorization and protection against
22 removal (deportation) while their applications are pending.

23 **Determining whether you are an *IAP/NWIRP* class member.**

24 The requirements for *IAP/NWIRP* class membership are quite complex, and you should
25 consult a qualified attorney or community-based immigrant assistance agency if you think
26 there is any possibility that you may be a *IAP/NWIRP* class member.

26 In summary, you must meet three types of requirements to be an *IAP/NWIRP* class
27 member:



1 (1) Basic eligibility for legalization. You must appear to meet all of the following basic
2 requirements for legalization:

- 3 (a) You entered the United States on a non-immigrant visa (for example a
4 visitor's visa, or student visa, or temporary worker visa) prior to January 1,
5 1982; and
- 6 (b) You lived continuously and illegally in the United States from prior to
7 January 1, 1982 until some time between May 5, 1987 and May 4, 1988, when
8 you visited the INS or a Qualified Designated Entity ("QDE") to apply for
9 legalization under the 1986 "amnesty" law; and
- 10 (c) You have not been convicted of certain criminal offenses: (1) one felony or
11 three misdemeanors in the United States, (2) any crime involving moral
12 turpitude, such as theft or fraud, except a single petty offense or a juvenile
13 conviction, or (3) any drug offense, except simple possession of marijuana
14 under 30 grams.

15 (2) IAP/NWIRP requirements. Next, you must fall into at least one of the following
16 three categories:

- 17 (a) You violated your nonimmigrant status prior to January 1, 1982 and the
18 violation of status is evident based on a review of federal government files
19 (for example, you worked without authorization before January 1, 1982 and
20 you have Social Security records, tax records, or other federal government
21 records to show income relating to your pre-1982, unauthorized work in
22 your name; or you were here with a non-immigrant visa and before 1982,
23 you failed to file annual or quarterly address reports with the INS, as then
24 required by the law); or
- 25 (b) You entered the United States prior to January 1, 1982 as a student (on "F"
26 or "J" visa) or as a temporary workers (on "H" or "L" visa), and you failed
27 to maintain your status through January 1, 1982 (for example, before
28 January 1, 1982, you dropped out of school, took less than a full course of
study, transferred schools without advance INS authorization, or terminated
your authorized H or L employment); or
- (c) After January 1, 1982, you obtained reinstatement to nonimmigrant status,
or entry into the United States on a nonimmigrant visa, or a change of
nonimmigrant status, or adjustment of status, or some other immigration
benefit that apparently put you in lawful immigration status, though you
did not qualify for such benefit (for example, because when you applied for



1 the benefit, you did not inform INS or the consulate that you had previously
2 worked without authorization).

- 3 (3) **Attempt to file timely application.** Finally, you must have made a significant effort
4 to apply for legalization between May 5, 1987 and May 4, 1988.

5 You must have either filed an application for legalization or attempted to apply at
6 an INS or QDE office between May 5, 1987 and May 4, 1988, and been denied an
7 application form, told that you were ineligible for legalization, or told that your
8 application for legalization would not be accepted.

8 **Proving that you meet the three requirements of IAP/NWIRP class membership.**

9 You must file an I-687 together with your Class Member Worksheet, as described below.
10 However, if you filed an application for legalization during the application period
11 between May 5, 1987 and May 4, 1988 and your application remains pending or was
12 denied, you do not have to file a new I-687 form. If your application remains pending (at
13 the District Office, Regional Office or Service Center), then you may, but are not required
14 to, submit a Class Member Worksheet to USCIS. If your 1987-88 application was denied,
15 you must file a motion to reopen on Form I-290B to USCIS.

14 **Filling out and filing the Notice of Class Member Worksheet and other forms.**

15 Fill in a Class Member Worksheet by checking the appropriate boxes. You can obtain this
16 form from your local USCIS (formerly called the INS) office. Local community groups and
17 immigration lawyers may also have the forms available. You can also obtain the forms
18 from the USCIS web site, www.uscis.gov, or class counsels' web pages, www.ghp-law.net, or www.centerforhumanrights.org.

19 There is no separate fee for filing a Class Member Worksheet.

20 You will need to prepare and file the following forms:

- 21
- 22 (1) If you assert that the INS or a QDE rejected your application between May 5, 1987
23 and May 4, 1988, then you must file the Class Member Worksheet together with an
24 Application for Status as a Temporary Resident (Form I-687).
- 25 (2) If you filed a legalization application between May 5, 1987 and May 4, 1988, but
26 your timely application remains pending (at a District Office, Regional Office, or
27 Service Center), then you may but are not required to file a Class Member
28 Worksheet.
- (3) If you filed a legalization application between May 5, 1987 and May 4, 1988, but
your application has been denied (either at the District Office, Service Center or the



1 Administrative Appeals Office), then you must file a Class Member Worksheet
2 together with a Form I-290B and filing fee.

3 If you request work authorization, then you must submit an Application for Employment
4 Authorization (Form I-765) together with the filing fee. Class members are entitled to
5 temporary employment and advance parole while their applications or timely filed
6 appeals from any denials of class membership or legalization are pending.

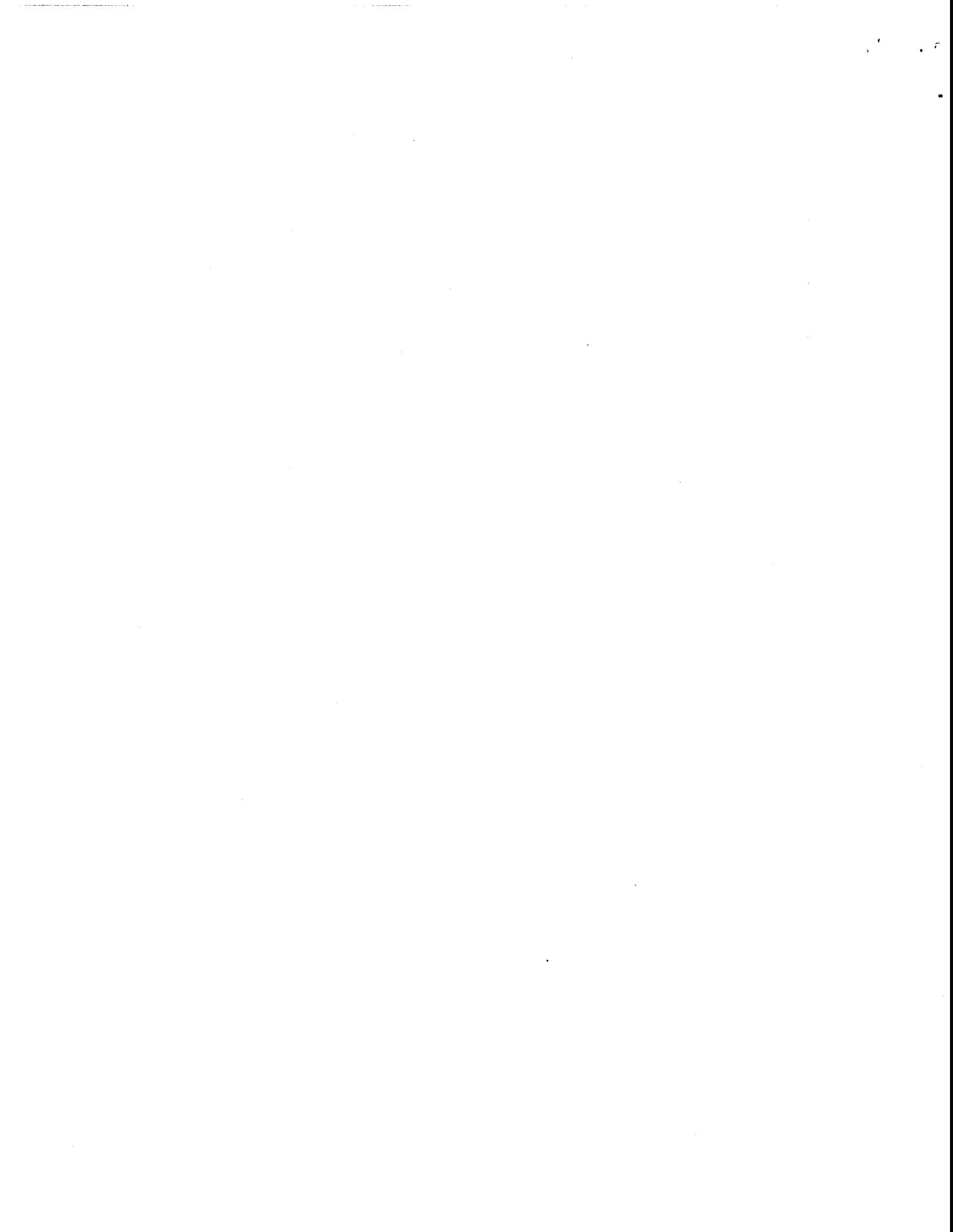
7 Subclass A and B members (those who were turned away when they attempted to file
8 legalization applications in 1987-88) must attach to the Class Member Worksheet any
9 available evidence regarding their non-immigrant entry into the United States before
10 January 1, 1982, including, for example, copies of passports, entry stamps, visa
11 applications, I-94's, I-20's, airline travel records, documents showing that they were
12 present in the United States in non-immigrant status prior to or shortly after January 1,
13 1982, or credible declarations regarding entry prior to January 1, 1982 with a non-
14 immigrant visa. If an applicant does not possess or is unable to obtain this type of
15 evidence, the applicant may submit a sworn statement including the U.S. Consulate
16 where the pre-1982 non-immigrant visa was applied for, the approximate date that it was
17 obtained, the type of visa obtained, the date when the visa was used to enter the United
18 States, where the applicant entered the United States using the non-immigrant visa, and a
19 brief description of any activities that the class member engaged in consistent with the
20 terms of the visa immediately after entering the United States. Applicants may also
21 request that the USCIS check its records, prior to an adjudication of the Worksheet, to
22 determine if any evidence exists of the alien's nonimmigrant entry prior to January 1,
23 1982.

24 If you are filing a Class Member Worksheet together with either an I-687 or I-290B form
25 (Subclass B or C(i)), then mail the completed Class Member Worksheet together with the
26 appropriate forms and filing fees, and four passport photos, and the current biometrics
27 fee, as follows. If you are sending the Worksheet and forms via U.S. Postal Service:

28 U.S. Citizenship and Immigration Services
P.O. Box 805876
Chicago, IL 60680-4120

If you are sending the Worksheet and forms via any other means:

US Citizenship and Immigration Services
427 S. LaSalle, 3rd Floor
Chicago, IL 60605-1029



1 If you are filing only a Class Member Worksheet to notify USCIS of your pending I-687
2 application (Subclass C(ii)), mail the Class Member Worksheet to:

3 NWIRP Worksheet
4 USCIS
5 National Benefits Center
6 P.O. Box 9001
Lee's Summit, MO 64002-9001

7 Be sure to keep a copy of everything that you submit to the USCIS, including your filing
8 fee checks or money orders. It is strongly recommended that you send your application
9 documents by a method that provides proof of delivery, such as USPS Priority Mail with
10 Confirmation, or FedEx, UPS or DHL. You may also send a copy of your application to
class counsel at the address below.

11 **Filing deadline**

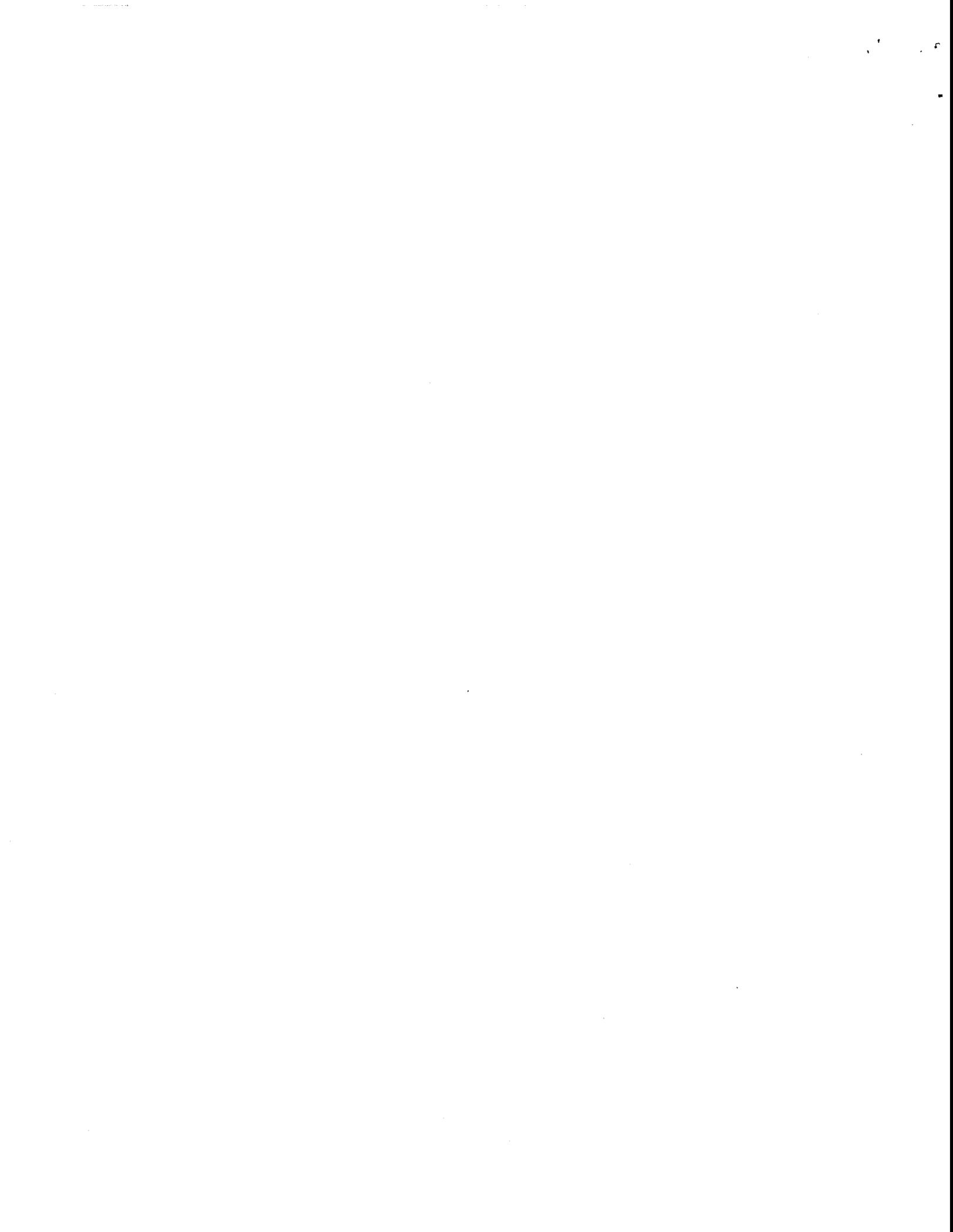
12 If your application was rejected between May 5, 1987 and May 4, 1988, you must submit a
13 Class Member Worksheet and completed legalization application form to the USCIS in the
14 12 month period beginning _____, and ending _____. [insert dates
pursuant to Paragraph 4B of the Settlement]

15 If you filed a legalization application during the May 5, 1987 and May 4, 1988 application
16 year but the INS denied your application you may file a motion to reopen (re-decide)
17 your application at any time but no later than one year from the date you receive a
written notice of this settlement sent to you by the CIS.

18 **Processing your Class Member Worksheet.**

19 USCIS will decide within 120 days whether it agrees that you are a class member. If
20 USCIS agrees that you are a class member, it will then decide your legalization
21 application. Normally, this will take an additional 180 days.

22 If the USCIS opposes your class membership, it will issue you a Notice of Intent To Deny
23 your class membership. You will then have 30 days to submit additional evidence that
24 you are a class member. The USCIS will then have 90 days to decide whether it still
25 opposes your class membership. If it does, you will have 30 days to ask a court officer,
26 known as a Special Master, to decide whether you are a class member. If the Special
Master decides that you are a class member, USCIS will then process your legalization
27 application in accordance with the time limits previously described.
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2 **Processing your I-687 legalization application.**

3 The settlement requires the USCIS to adjudicate *IAP/NWIRP* class members' legalization
4 applications just as though they had been filed during the original 1987-88 application
5 year, except the USCIS will apply the specified "known to the government" and
6 continuous unlawful residence standard.

7 While your properly filed I-687 application or Motion to Reopen is pending, you are
8 entitled to protection against removal (deportation) and to apply for work authorization.
9 You must apply for employment authorization by submitting a Form I-765 along with
10 your I-687 legalization application and Class Member Worksheet. An employment
11 authorization card (EAD) will be issued to you if the USCIS agrees you are a class
12 member.

13 Class members whose legalization applications the USCIS intends to deny will be sent a
14 notice of intended denial and will have at least 30 days to correct whatever problems the
15 USCIS identifies in the legalization application.

16 Class members whose legalization applications the USCIS denies are entitled to appeal to
17 the USCIS Administrative Appeals Office. You will have 30 days to file such an appeal. To
18 make sure that your appeal time does not run out before you get notice of a denial, be
19 sure to keep USCIS informed of your current address.

20 **Confidentiality.** Unless you commit fraud, all the information you submit in connection
21 with an *IAP/ NWIRP* Class Member Worksheet or legalization application may generally
22 be used only to decide those applications and, generally, may not be used to obtain a
23 removal (deportation) order against you.

24 **Travel.** You may apply for advance parole while your application is pending by
25 submitting a Form I-131 application, together with the applicable filing fee and photos.
26 The Form I-131 can be submitted with your initial application or later.

27 Class counsel strongly recommend, however, that you not leave the country until after
28 you have received Temporary Residence. Obtaining travel authorization (advance parole)
does not guarantee that you are admissible to the United States, and your legalization
application could also be denied while you are outside of the country.

Family members. Family members do not obtain legalization merely by being listed on
your legalization application. Each applicant must qualify independently for legalization.

However, the spouses and unmarried children of *NWIRP* class members who become
Temporary Residents are eligible to apply for "family unity" benefits if they resided in the
United States on May 5, 1988. Family members granted such benefits will be permitted to



1 stay and work lawfully in the United States until they become residents through the
2 normal family-based immigration system.

3 **Further information.** Do not contact the Court for information. For further information
4 and forms, go to the web site of class counsel, www.centerforhumanrights.org and
5 www.ghp-law.net Forms and information are also available on the U.S. Citizenship and
6 Immigration Service's web site, www.uscis.gov/graphics/index.htm.

7 *After you have read these information sheets, and reviewed the web pages of class counsel, you
8 may also contact the lawyers representing the class:*

9 CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
10 256 S. Occidental Blvd.,
11 Los Angeles, CA 90057
12 (213) 388-8693, exts. 104 or 109
13 E-mail: amnestycoordinator@centerforhumanrights.org

14 GIBBS, HOUSTON PAUW
15 1000 Second Ave., Suite 1600,
16 Seattle, WA 98104
17 (800) 654-9155
18 E-mail: info@ghp-law.net

