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



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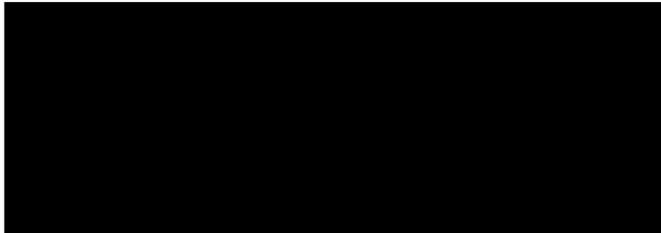


Office: LOS ANGELES

Date: **JUL 0 8 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:

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 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.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

James H. H. H.

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

The director denied the application, finding that the applicant was convicted of three or more misdemeanors in the United States and is, therefore, ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.18(a)(1). In addition, the director determined that the applicant's misdemeanor convictions were for crimes involving moral turpitude (CIMT's), which render the applicant ineligible for adjustment to permanent resident status under the LIFE Act. The director also found that the applicant is ineligible for adjustment to permanent resident status because he had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.¹

The applicant asserts that the director erred in finding that he was ineligible for adjustment to permanent resident status on the basis of three misdemeanors which constitute CIMT's, since the applicant's convictions have been expunged. In addition, the applicant asserts that the evidence which he has submitted establishes his unlawful residence for the requisite period. The applicant has not submitted any additional evidence on appeal.² The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.³

The AAO notes that the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, which was not signed by the applicant. Therefore the AAO will not be sending a copy of the decision to the attorney listed on the Form G-28.

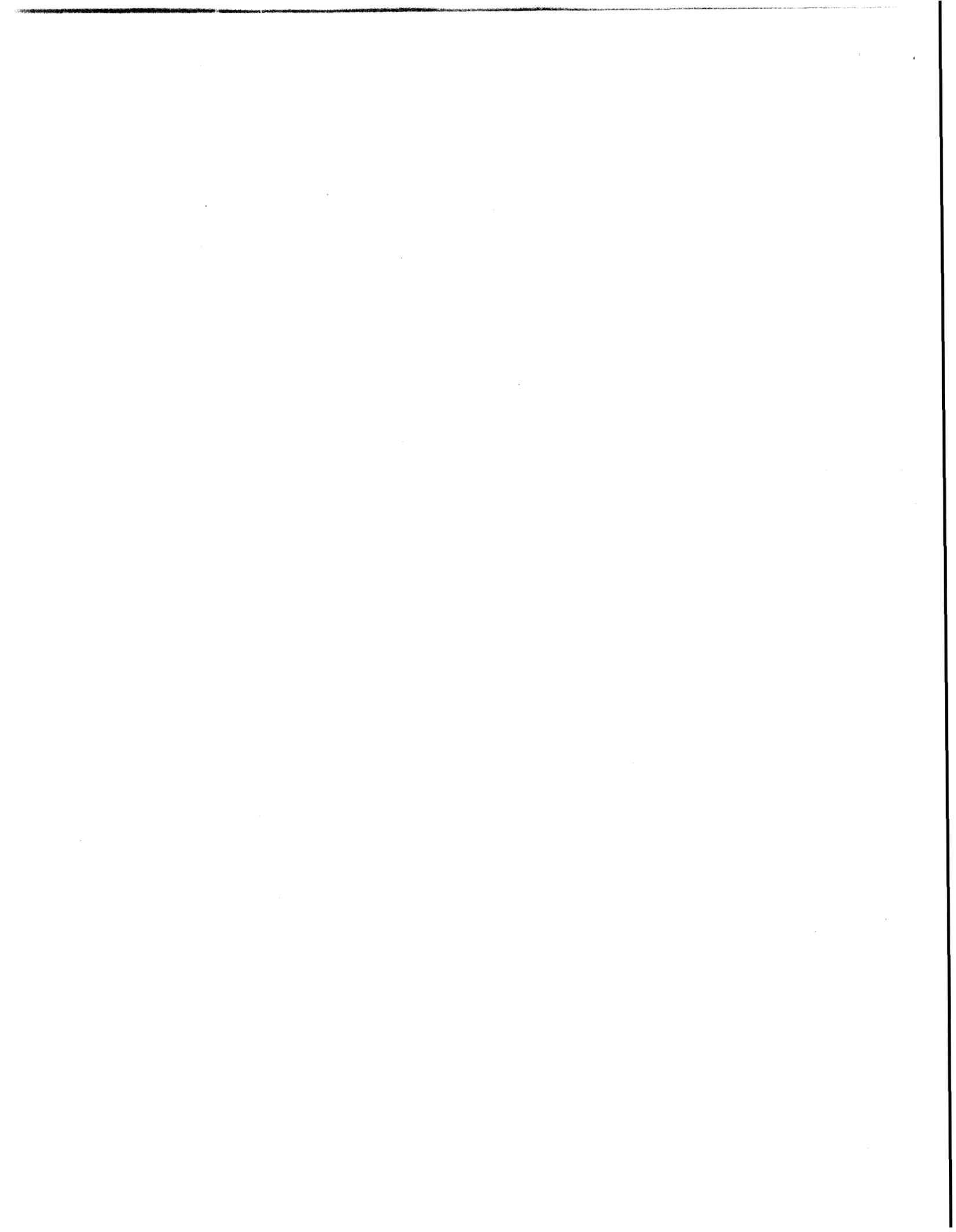
Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

¹ The applicant has submitted a Form I-690, application for a waiver, based upon his inadmissibility as an alien who is determined to have been infected with HIV. The Form I-690 has not been adjudicated.

² The record reflects that the applicant's FOIA request, NRC2008054368, was closed on October 26, 2008 for failure to comply.

³ The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).



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).

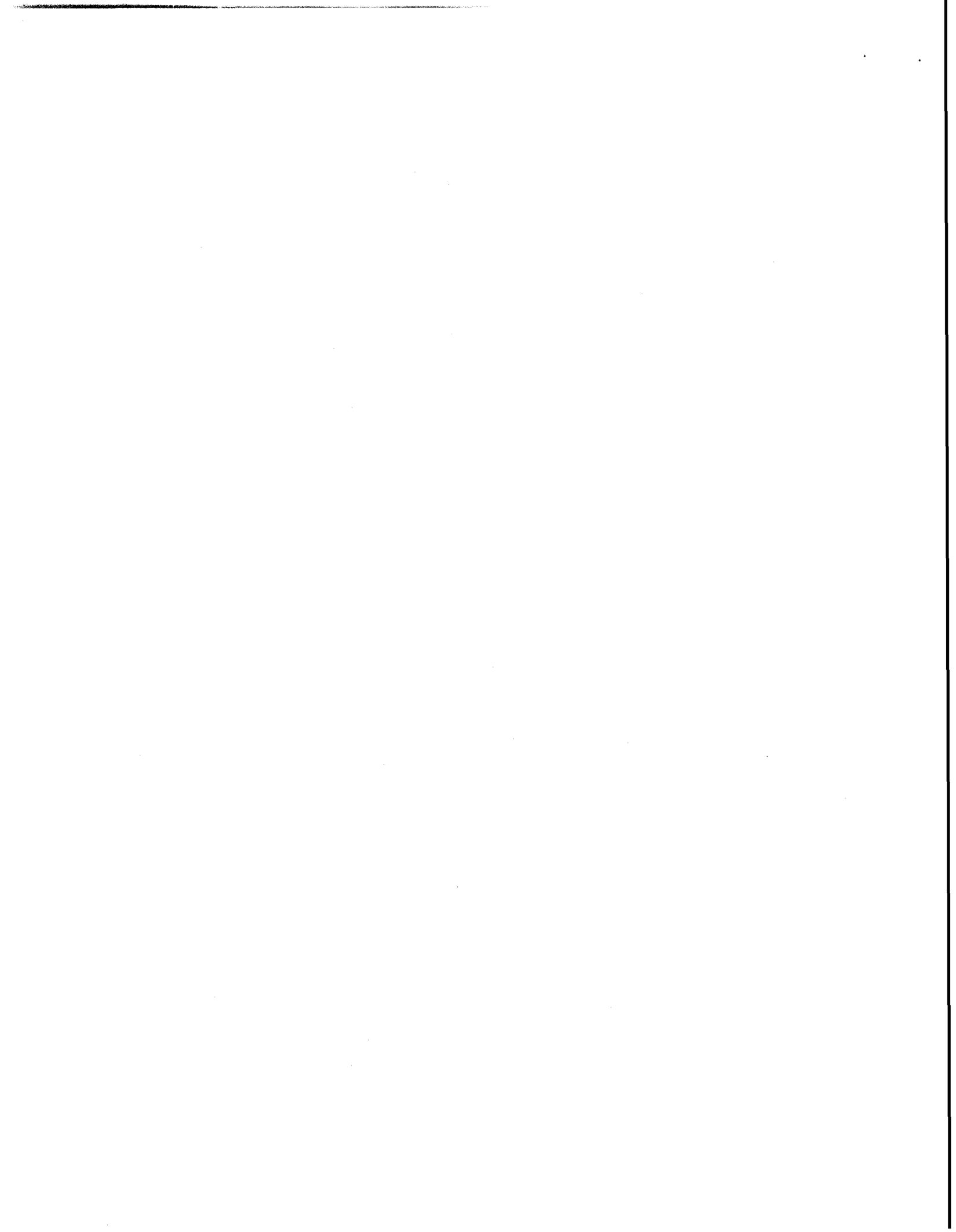
The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

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).

Further, an alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.11(d)(1). "Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

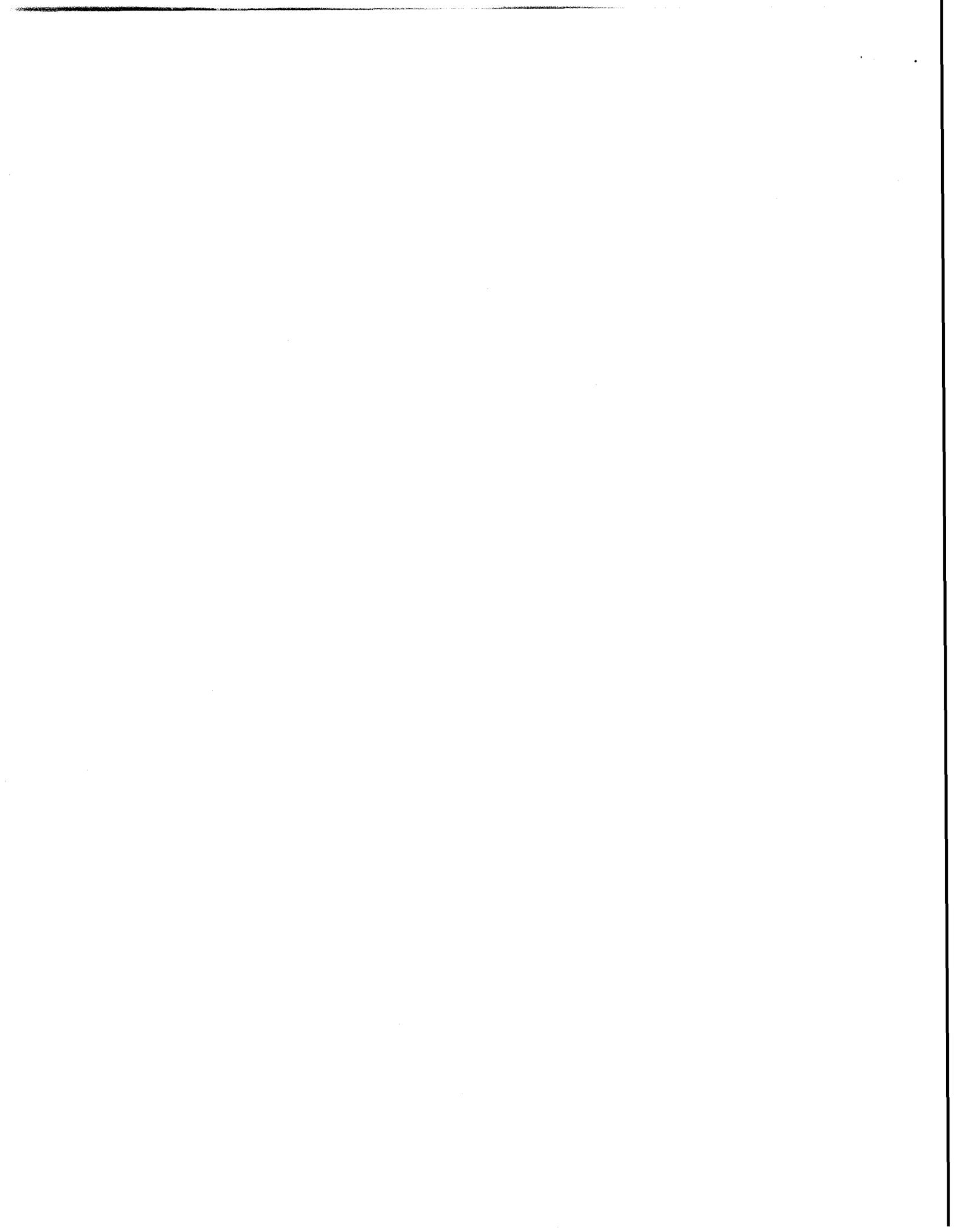
"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).



Additionally, an applicant who has been convicted of a crime involving moral turpitude (CIMT) is inadmissible, and therefore ineligible for permanent resident status. But, an alien with one CIMT is not inadmissible if he or she meets the petty offense exception. See 8 U.S.C. § 1182(a)(2)(A)(ii). A CIMT will meet the petty offense exception if “the maximum penalty possible for the crime of which the alien was convicted . . . did not exceed imprisonment for one year and . . . the alien was not sentenced to a term of imprisonment in excess of 6 months.” *Lafarga v. INS*, 170 F.3d 1213, 1214-15 (9th Cir. 1999) (quoting 8 U.S.C. § 1182(a)(2)(A)(ii)(II)); see also *Garcia-Lopez v. Ashcroft*, 334 F.3d 840, 843-46 (9th Cir. 2003). For the purpose of the petty offense exception, “the maximum penalty possible’ . . . refers to the statutory maximum sentence, not the guideline sentence to which the alien is exposed.” *Mendez-Mendez v. Mukasey*, 525 F.3d 828, 835 (9th Cir. 2008) (offense of bribery of a public official did not qualify for petty offense exception where statutory maximum for offense was 15 years).

The record contains court documents that reflect the applicant has been convicted of the following offenses:

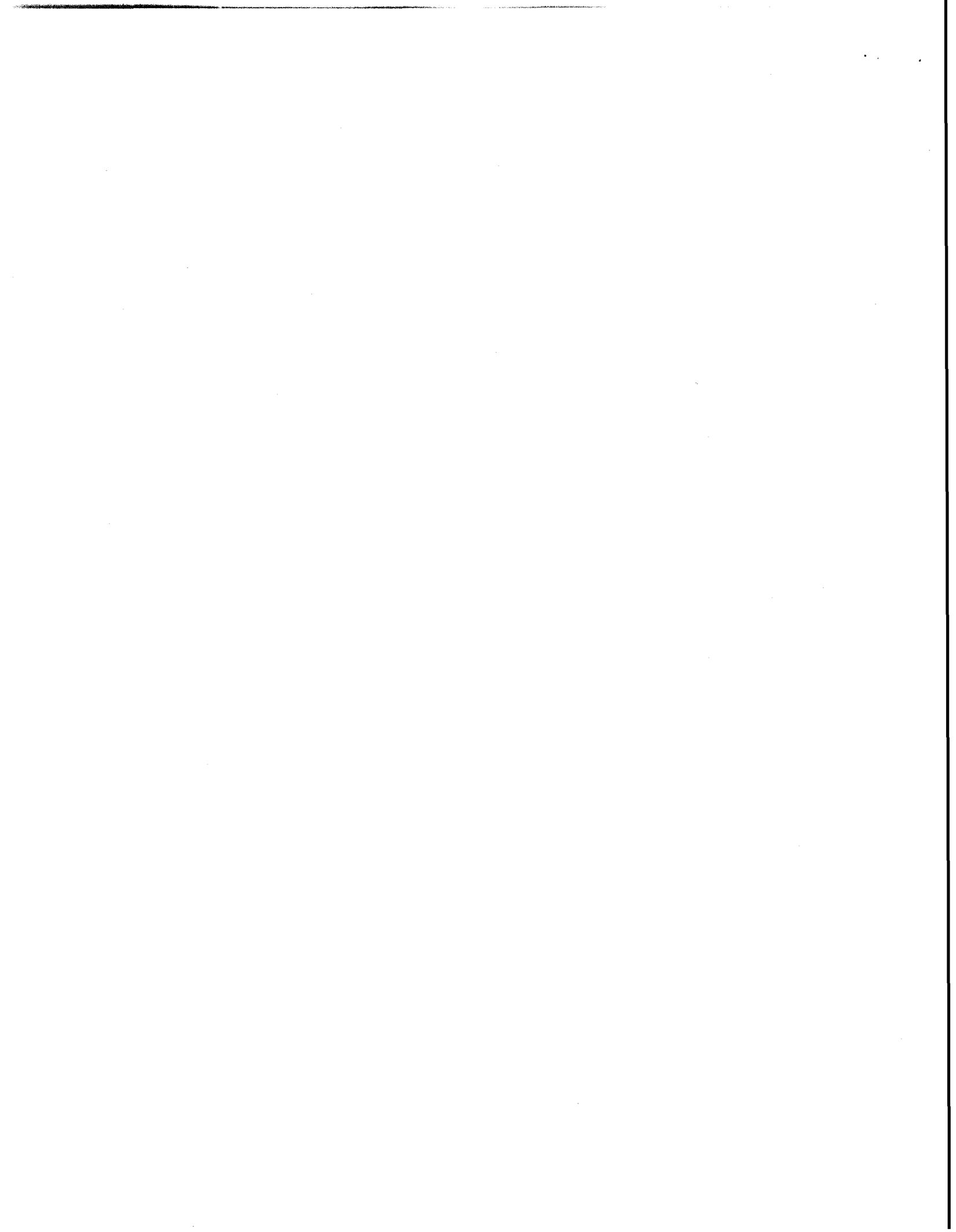
- On December 21, 1989, the applicant was charged with violating section 484(a) of the California Penal Code (PC), *theft of property*. On February 5, 1990, the applicant pleaded *nolo contendere* to the charge as a misdemeanor, and was placed on summary probation for 12 months and ordered to pay a fine. (Municipal Court of California, County of Los Angeles case number [REDACTED]). On February 24, 2006, based upon the applicant’s petition for expungement pursuant to section 1203.4 (PC), and upon the applicant’s compliance with the terms of his probation, the conviction was set aside, a plea of not guilty was entered and the case was dismissed.
- On February 16, 1998, the applicant was charged with violating section 647(a) of the California Penal Code (PC), *disorderly conduct: soliciting a lewd act*. On May 15, 1998, the applicant was found guilty of the charge as a misdemeanor, and was placed on summary probation for 12 months, ordered to serve 5 days in jail, and ordered to pay a fine. (Municipal Court of California, County of Los Angeles case number [REDACTED]). On February 24, 2006, based upon the applicant’s petition for expungement pursuant to section 1203.4 (PC), and upon the applicant’s compliance with the terms of his probation, the conviction was set aside, a plea of not guilty was entered and the case was dismissed.
- On January 2, 2003, the applicant was charged with violating section 487(a) of the California Penal Code (PC), *grand theft: property over \$400*. On January 8, 2003, the applicant pleaded *nolo contendere* to the charge as a misdemeanor, and was placed on summary probation for 36 months, ordered to serve 1 day in jail, and ordered to pay a fine. (Superior Court of California, County of Los Angeles case number [REDACTED]). On February 21, 2006, based upon the applicant’s petition for expungement pursuant to section 1203.4 (PC), and upon the applicant’s compliance with the terms of his probation, the conviction was set aside, a plea of not guilty was entered and the case was dismissed.



The first issue in this case is whether the expungements of the applicant's misdemeanor convictions are valid for immigration purposes. The AAO finds that these convictions stand for immigration purposes. The Ninth Circuit Court of Appeals, the jurisdiction in which this case arises, has ruled on the effect of post-conviction expungements pursuant to a state rehabilitative statute, such as section 1203.4 (PC).⁴ Generally, expungements or vacatures of a criminal conviction pursuant to the successful completion of some form of rehabilitation or probation are considered valid convictions for immigration purposes unless the conviction was dismissed because of a fundamental procedural or constitutional error in the trial court proceedings. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). In this case, there is no evidence in the record to suggest that the applicant's convictions were expunged because of an underlying procedural defect in the trial court proceedings. Therefore, the applicant remains "convicted", for immigration purposes, of the above-cited misdemeanor offenses. As stated above, an alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to lawful permanent resident status. Thus, the applicant would be ineligible for adjustment to permanent resident status due to his three misdemeanor convictions. See 8 C.F.R. § 245a.11(d)(1). There is no waiver available to an applicant convicted of three or more misdemeanors committed in the United States.

The next issue in this case is whether the applicant is inadmissible because he has convictions for crimes involving moral turpitude (CIMT's). First, regarding the applicant's convictions for theft of property and grand theft, crimes involving fraud, deceit, and theft are generally considered to be crimes involving moral turpitude. See, e.g., *Rashtabadi v. INS*, 23 F.3d 1562, 1568 (9th Cir. 1994) (California conviction for grand theft is a CIMT); *McNaughton v. INS*, 612 F.2d 457, 459 (9th Cir. 1980) (per curiam) (conspiracy to affect the market price of stock by deceit with intent to defraud is a CIMT); *Winestock v. INS*, 576 F.2d 234, 235 (9th Cir. 1978) (dealing in counterfeit obligations is a CIMT); see also *United States v. Esparza-Ponce*, 193 F.3d 1133, 1136-37 (9th Cir. 1999) (stating in illegal reentry case that petty theft constitutes a CIMT); *Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013, 1017-20 (9th Cir. 2005) (burglary convictions under Wash. Rev. Code §§ 9A.52.025(1) and 9A.08.020(3) do not categorically meet the definition of CIMT, but do meet the definition under the modified categorical approach because petitioner intended to steal property, a fraud crime); see also *Flores Juarez v. Mukasey*, 530 F.3d 1020, 1022 (9th Cir. 2008) (per curiam) ("Petty theft is a crime involving moral turpitude under 8 U.S.C. § 1229b(b)(1)(B).") The AAO finds that the applicant's convictions for theft of property and grand theft are convictions for CIMT's.

⁴ See *Murillo-Espinoza v. INS*, 261 F.3d 771, 774 (9th Cir. 2001) (expunged theft conviction still qualified as an aggravated felony); *Ramirez-Castro v. INS*, 287 F.3d 1172, 1174 (9th Cir. 2002) (expunged misdemeanor California conviction for carrying a concealed weapon did not eliminate the immigration consequences of the conviction); see also *de Jesus Melendez v. Gonzales*, 503 F.3d 1019, 1024 (9th Cir. 2007); *Cedano-Viera v. Ashcroft*, 324 F.3d 1062, 1067 (9th Cir. 2003) (expunged conviction for lewdness with a child qualified as an aggravated felony).



Second, the AAO finds that the applicant's conviction for disorderly conduct for soliciting a lewd act would constitute a CIMT. Moral turpitude refers generally to conduct that is inherently base, vile or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general. *Matter of L-V-C-*, 22 I&N Dec. 594, 603 (BIA 1999). Moral turpitude has been defined as an act which is per se morally reprehensible and intrinsically wrong, so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude. *Matter of Franklin*, 20 I&N Dec. 867, 868 (BIA 1994).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 61 5, 61 7-1 8 (BIA 1992), that:

Moral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general. . . .

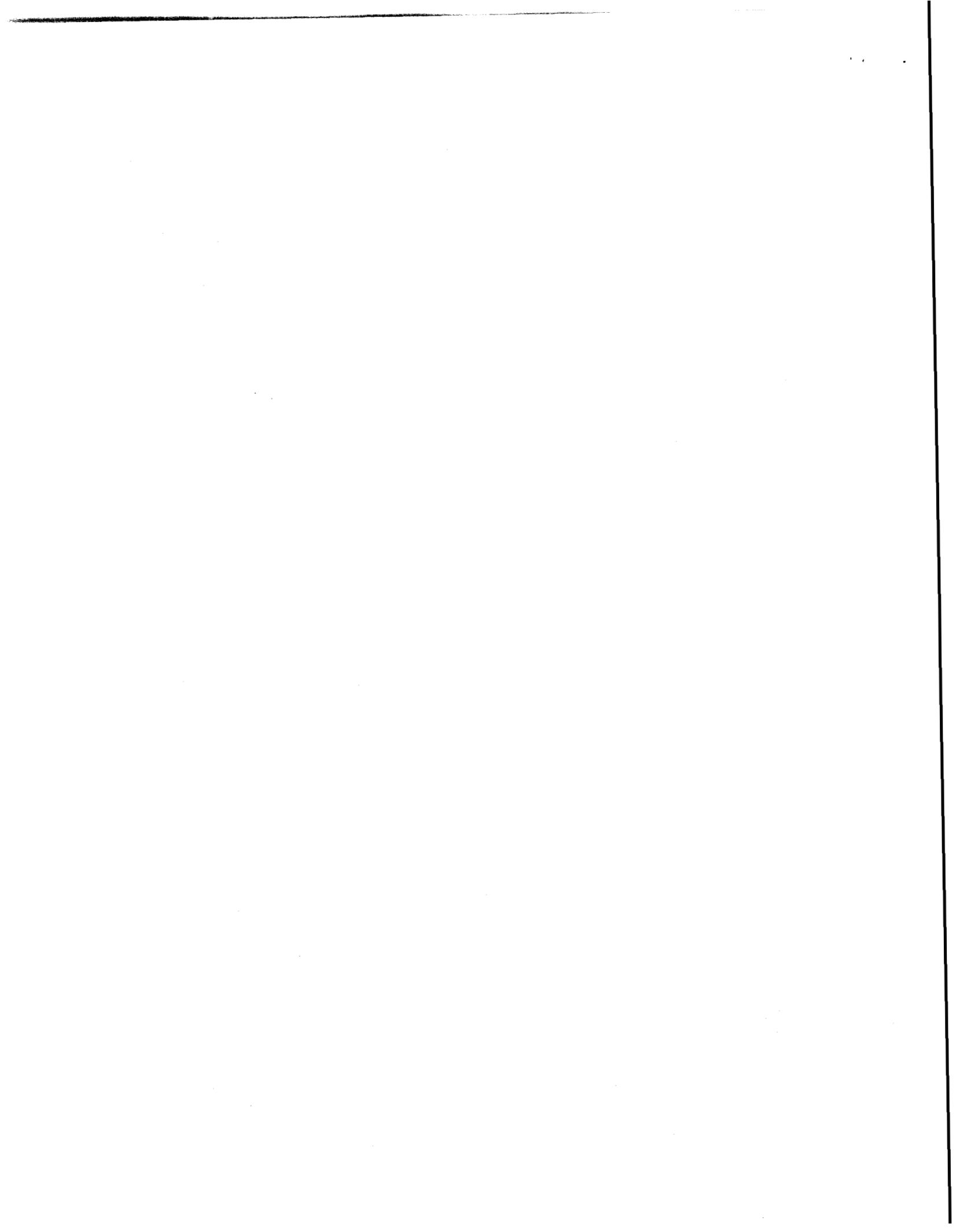
In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

In general, the crime of disorderly conduct is not a CIMT where evil intent is not necessarily involved. See *Matter of S-*, 5 I. & N. Dec. 576 (BIA 1953), *Matter of P-*, 2 I. & N. Dec. 117 (BIA 1944), and *Matter of Mueller*, 11 I. & N. Dec. 268 BIA 1965). However, disorderly conduct is a divisible statute, and that portion of the statute relating to soliciting a lewd act has been held to be a CIMT. See *U.S. v. Nunez-Garcia*, 262 F. Supp. 2d 1073 (C.D. Cal. 2003); *Matter of Alfonso-Bermudez*, 12 I&N Dec. 225 (BIA 1967)(a resident alien's offer to commit a lewd and indecent act with an undercover officer in a Phoenix restroom was a crime of moral turpitude).

Therefore, the AAO finds that the Director correctly determined that for immigration purposes the applicant stands convicted of three CIMT's.

Moreover, as noted *supra*, an applicant who has been convicted of a CIMT is inadmissible, and therefore ineligible for permanent resident status. However, an alien with one CIMT is not inadmissible if he or she meets the petty offense exception, which requires that the maximum penalty possible for the crime of which the alien was convicted did not exceed imprisonment for one year, and that the alien was not sentenced to a term of imprisonment in excess of 6 months. 8 U.S.C. § 1182(a)(2)(A)(ii). The AAO finds that since the applicant has three convictions which are CIMT's, he does not qualify for the petty offense exception. Therefore, the applicant's CIMT convictions are grounds for denial of this application because they render him



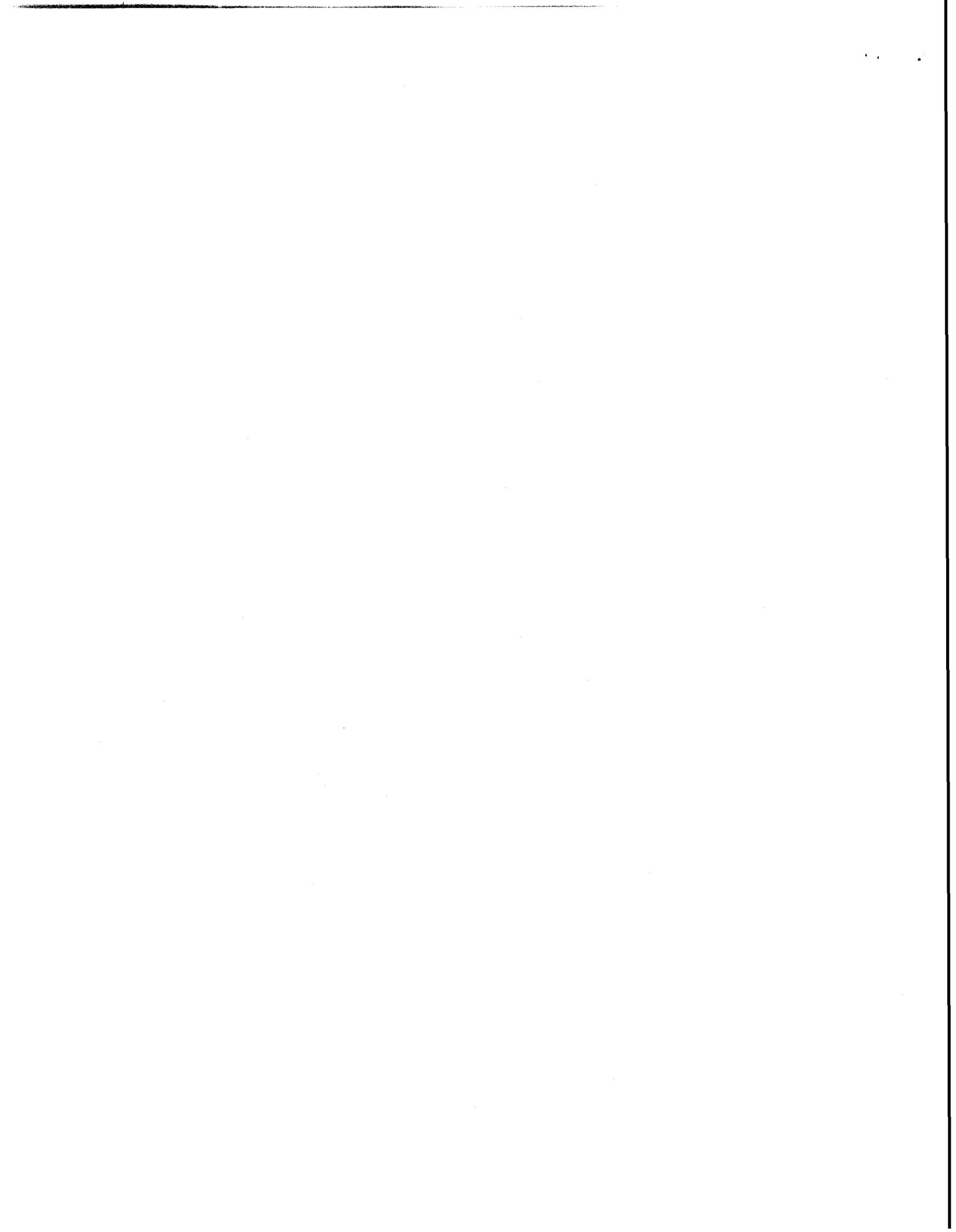
inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), and, therefore, ineligible for adjustment to permanent resident status. There is no waiver available to an alien who has been convicted of a CIMT.

Further, the applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite statutory period. An additional issue in this proceeding is whether the applicant has established that he (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 of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of a witness statement and documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The applicant has submitted a witness statement from [REDACTED]. The statement is general in nature and states that the witness has knowledge of the applicant's residence in the United States for a portion of the requisite period.

Although the witness claims to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness's statement does not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness 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 it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witness does not state how he dates his initial meeting with the applicant or specify social gatherings, other special occasions or social events when he saw and communicated with the applicant during the requisite period. The witness does not provide sufficient details that would lend credence to his claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness's statement does not indicate that his assertions are probably true.

The applicant has submitted copies of 14 rent receipts dated as follows: July 1, 1982, May 1, 1983, September 1, 1984, December 1, 1985, August 24, 1987, September 12, 1987, September 19, 1987, November 30, 1987, December 7, 1987, December 29, 1987, January 4, 1988, January 12, 1988, February 5, 1988 and March 7, 1988. These documents are some evidence in support of the applicant's residence in the United States during some part of 1982, 1983, 1984, 1985, 1987 and 1988. However, the rent receipt dated September 1, 1984 states that the applicant was residing on [REDACTED] in Huntington Park. In an initial Form I-687, application for status as a temporary



resident filed in 1991 to establish the applicant's CSS class membership, the applicant did not list this address as a residence during the requisite period. In addition, regarding the rent receipts dated September 12, 1987 through March 7, 1988, in the initial I-687 application the applicant does not list any residence address for this part of the requisite period. Due to these inconsistencies, these documents have minimal probative value.

The applicant has submitted a copy of a California Department of Motor Vehicles identification card dated July 6, 1987, and an application for renewal of the identification card dated September 29, 1987. The identification card lists the applicant's residence address as [REDACTED] and the application for renewal lists the applicant's residence address as [REDACTED]. However, in the initial I-687 application the applicant does not list either of these addresses as a residence during the requisite period. Due to these inconsistencies these documents will be given no weight.

The record contains a copy of the applicant's membership card in the [REDACTED] Adult School for some part of 1987 and 1988.

The record contains a copy of a receipt for registered mail sent by the applicant, which is dated April 26, 1988. The record also contains receipts for money transfers dated November 2, 1987, February 29, 1988 and May 2, 1988, respectively. The 1988 receipts list the applicant's residence address as 7th Street in Los Angeles. However, in the initial I-687 application the applicant does not list this address as a residence during the requisite period. Due to these inconsistencies these documents will be given no weight.

While the documents listed above indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish the applicant's continuous residence for the duration of the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-485 application, an initial Form I-687, application for status as a temporary resident, filed in 1991 to establish the applicant's CSS class membership, and a second I-687 application dated April 13, 1996. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the date of his initial entry into the United States, as well as his absences from the United States and the location of his residences in the United States during the requisite period.

In the initial I-687 application dated December 5, 1991, the applicant listed residences in California beginning in November 1981 as follows: from November 1981 to July 1982 on [REDACTED] in Los Angeles; from July 1982 to December 1982 on [REDACTED] in Cudahy; from May 1983 to August 1984 on [REDACTED] in Maywood; from January 1985 to December 1985 on Miles Soto Avenue in Huntington Park; and, from January 1986 to August 1987 on [REDACTED] in Los Angeles. At his interview on January 16, 1992, the applicant stated that during the requisite period he had one absence from the United States, in May, 1987. In a class member worksheet submitted



with the I-687 application, the applicant listed his absence from the United States as being from May 7, 1987 until May 30, 1987, although the I-687 application listed the applicant's date of last entry into the United States as being May 26, 1987.

In the I-687 application dated April 13, 1996, the applicant listed residences in California beginning in December 1981 as follows: from December 1981 to July 1986 on [REDACTED]; from January 1982 to May 1983 on [REDACTED] in Cudahy; and, from January 1987 for the duration of the requisite period on [REDACTED] in Los Angeles. The overlapping dates are incongruous. There are contradictions as to when and where the applicant resided. In the I-687 application dated April 13, 1996, the applicant stated that during the requisite period he had one absence from the United States, from June 24, 1987 to July 31, 1987.

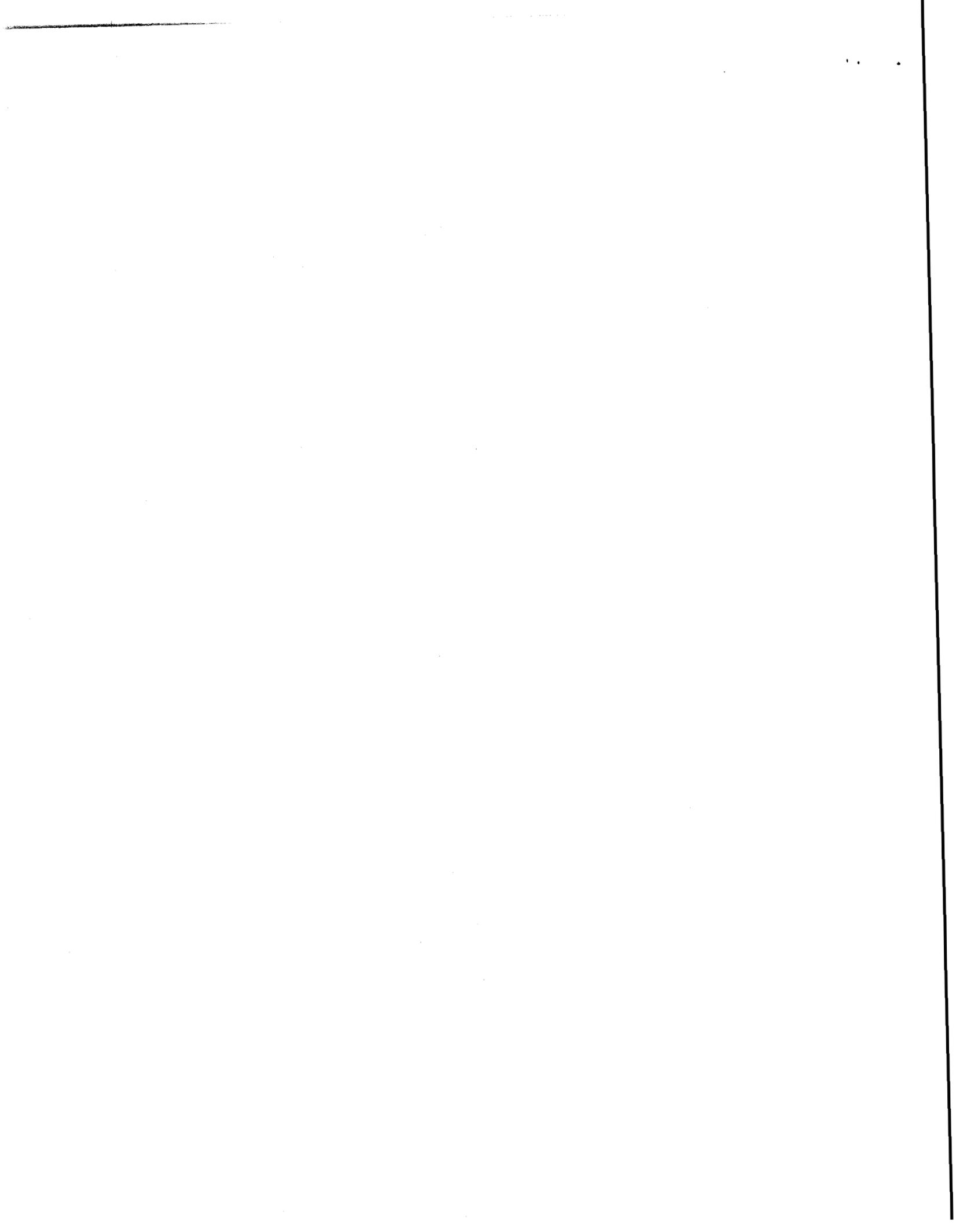
In the I-485 application, the applicant listed the date of his last entry into the United States as June 16, 1987.

The applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the dates the applicant entered the United States, was absent from the United States, and resided at a particular location in the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

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 he is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

The record reveals that deportation proceedings were instituted against the applicant on February 7, 1991, as an alien who entered the United States without inspection.⁵ In those proceedings the applicant was offered the opportunity to voluntarily depart the United States. The record shows that the applicant subsequently voluntarily departed the United States to Mexico on February 11, 1991.

⁵ It appears that the applicant has a separate Administrative file, or A-file, [REDACTED], which has not been consolidated into the current record of proceedings.



Therefore, based upon the foregoing, the applicant has failed to establish continuous residence in an unlawful status in the United States for some time prior to January 1, 1982 and through May 4, 1988. In addition, the applicant has been convicted of three misdemeanors, making him ineligible for the benefit sought pursuant to 8 C.F.R. § 245a.11(d)(1). Further, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act on the basis of three convictions for a CIMT. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the dismissal. The applicant is, therefore, ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act on each of the grounds noted.

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

