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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] OFFICE: Los Angeles DATE: OCT 1 6 2010

IN RE: Applicant: [redacted]

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 of the Los Angeles office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director found that the applicant failed to establish that he was in unlawful status in the United States prior to January 1, 1982 in a manner known to the government.

On appeal, the applicant asserts that the director erred in finding that he failed to prove that he was in unlawful status in the United States prior to January 1, 1982 and through May 4, 1988 in a manner known to the government.[1]

On August 24, 2010, the AAO sent the applicant a follow-up communication informing him that additional documentation was required in order to complete the adjudication of his appeal, and requesting that the applicant provide additional evidence. Specifically, the AAO requested that the applicant provide evidence to establish that he continuously resided in the United States in an unlawful status since the date of his entry on June 20, 1981 and throughout the requisite period. In addition, the AAO asked that the applicant supplement the record in support of his Form I-690 waiver application. Further, the AAO requested that the applicant provide a listing of all of his entries into and exits from the United States since the date of his entry on June 20, 1981 and through May 5, 1988. The applicant responded to the AAO's request by requesting to withdraw his appeal.

For the reasons set forth below, the AAO finds that the applicant violated the terms of his *nonimmigrant* status in a manner known to the government prior to January 1, 1982. The director's decision will therefore be withdrawn, and the AAO will consider the applicant's claim *de novo*.[2]

As a preliminary matter, the AAO notes that the director found the applicant eligible for class membership under the LIFE Act. On September 9, 2008, the court approved a final Stipulation of Settlement in the class-action 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 –
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> (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

[1] The record reflects that the applicant's FOIA request, [redacted], was closed for failure to comply on July 11, 2009. The record also reflects that the applicant's FOIA request, [redacted], was processed on December 17, 1996.

[2] 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).

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.

The AAO finds that the applicant is a member of the NWIRP class as enumerated above and will adjudicate the application in accordance with the standards set forth in the settlement agreement.

NWIRP provides that CSS/Newman legalization applications and Legal Immigration Family Equity Act of 2000 (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 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. With respect to individuals who obtained their status by fraud or mistake, the applicant bears the burden of establishing that he or she obtained lawful status by fraud or mistake. The settlement agreement further stipulates that the general adjudicatory standards set forth in 8 C.F.R. § 245a.18(d) or 8 C.F.R. § 245a.2(k)(4), whichever is more favorable to the applicant, shall be followed to adjudicate the merits of the application once class membership is favorably determined.

In addition, until December 29, 1981, section 265 of the Immigration and Nationality Act (Act) stated that any alien in the United States in "lawful temporary residence status shall" notify the Attorney General "in writing of his address at the expiration of each three-month period during which he remains in the United States, regardless of whether there has been any change in address."[3]

The applicant states that he entered the United States with a visitor's visa in 1973, 1974, 1975 and 1976, although the record does not contain any evidence to establish his entries in those years. The record reveals that on June 16, 1981 in Mexico, the applicant obtained a passport, and on June 18, 1981, he obtained a single-entry B-2 visitor's visa. The record reveals that the applicant was

[3] Section 265 was modified, effective December 29, 1981, such that lawful non-immigrants were no longer required to file quarterly address reports regardless of whether there had been any change in address. *See* section 265 of the Act (1980) and PL 97-116, 1981 HR 4327 (1981).

admitted to the United States as a valid nonimmigrant visitor on June 20, 1981[4], February 13, 1982, July 2, 1983 and March 30, 1988.[5]

Applying the adjudicatory standards set forth in the settlement agreement, the AAO finds that the applicant violated the terms of his nonimmigrant status in a manner known to the government prior to January 1, 1982, by failing to file the required quarterly address report by September 20, 1981, three months after his June 20, 1981 nonimmigrant entry. The applicant would have been required to provide written updates of his address at the expiration of each three-month period during which he remained in the United States, regardless of whether there was any change in address, for the period June 20, 1981 until December 29, 1981. The record of proceedings is devoid of any address updates. For this reason, the AAO finds that the applicant violated his nonimmigrant status in a manner known to the government prior to January 1, 1982, by failing to file quarterly or annual address notifications as required prior to December 29, 1981.

Similarly, the record supports the finding that the applicant obtained entry into the United States on June 20, 1981, February 13, 1982, July 2, 1983 and March 30, 1988 through fraud or mistake, as he was not in lawful nonimmigrant status, since his actual intent upon entry was to return to an un-relinquished domicile and to reside indefinitely in the United States. Consequently, these entries do not establish that the applicant was lawfully present in the United States during the statutory period.

For the reasons stated above, the applicant has overcome the grounds for denial cited by the director and has established that his unlawful status was known to the government prior to January 1, 1982.

However, the AAO finds that the applicant is not eligible for adjustment to permanent resident status because the applicant has failed to establish that he resided continuously in the United States from the date of his entry on June 20, 1981 and throughout the requisite period. Further, the applicant is ineligible because he is inadmissible due to his misrepresentations to renter the United States.

To be eligible for adjustment to permanent resident status under the LIFE Act, an applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

> (i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

[4] The record contains copies of 5 pay stubs under the name of [redacted], which the applicant asserts was his alias, dated January 1981 to November 1981. The record reflects that the applicant was absent from the United States on February 12, 1982, when he obtained a multiple-entry B-2 nonimmigrant visitor's visa in Mexico.

[5] The record reflects that at the time of his interview on June 5, 2003, the applicant presented two original passports covering the years 1981 to 1983. The applicant stated that his passport from 1986 was lost.

See also 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 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 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:
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> . . .
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> (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.
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> (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.

Section 1104(c)(2)(D) of the LIFE Act specifically references section 245A(d)(2) of the Act as that section of the law to be utilized to determine applicable grounds of inadmissibility and whether a waiver is available to overcome such a finding. Section 245A(d)(2)(B)(i) of the Act permits the Secretary of Homeland Security to waive certain grounds of inadmissibility, including inadmissibility under section 212(a)(6)(C)(i) of the Act, "in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." 8 C.F.R. § 245a.2(k)(2).

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 the regulatory 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. 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).

As previously stated, the AAO finds that under the terms of the NWIRP settlement agreement, the record indicates that during the statutory period the applicant was never in lawful nonimmigrant status.

An issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and that he continuously resided in the United States in an unlawful status since such date and through May 4, 1988. 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 witness statements and documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. 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 witness statements from [redacted] The statements are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do 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 witnesses do not state how they date their initial meeting with the applicant or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how

frequently they had contact with the applicant during the requisite period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. Therefore, the AAO finds that the witness statements do not indicate that their assertions are probably true. In addition, none of the witnesses has provided contact information, such as their address or telephone number, so that the information in their statements can be verified. None of the witnesses has provided any information to establish their identity or their presence in the United States during the requisite period. For all of the above reasons, the witness statements will be given no weight.

The applicant has submitted a copy of an employment verification letter from a representative of [redacted], in Pomona, stating that the applicant worked for the company from January 1984 for the duration of the requisite period as a part-time mechanic.

The employment verification letter does not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letter fails to comply with the above cited regulation because it lacks considerable detail regarding the applicant's employment. For instance, the witness does not state the applicant's daily duties, the number of hours or days he was employed, or the location at which he was employed. Furthermore, the witness does not state how he was able to date the applicant's employment. It is unclear whether he referred to his own recollection or any records he may have maintained. For these reasons, the employment verification letter is of minimal probative value.

The applicant has submitted copies of 5 pay stubs from [redacted] Products, Inc., under the name of [redacted] which the applicant claims was his alias, dated January 8, 1981, April 2, 1981, June 4, 1981, August 6, 1981 and November 5, 1981. The applicant has also submitted a copy of page 2 of his Mexican passport J-3488, which reveals that the passport was issued in Mexico on June 16, 1981. The applicant has also submitted page 31 of the passport, which reveals that on June 18, 1981 in Mexico he was issued a single-entry B-2 visitor's visa, and that he entered the United States on June 20, 1981 at [redacted] These documents are some evidence in support of the applicant's residence in the United States for some part of 1981.

The applicant has submitted copies of pages 28 and 29 of his Mexican passport J-3488, which contain a multiple-entry B-2 visitor's visa obtained in Mexico on February 12, 1982, and a United States entry stamp dated February 13, 1982 in San Antonio. The record also contains copies of four pay stubs from [redacted] Metals in [redacted] under the name of [redacted] dated February 24, 1982, April 14, 1982, June 2, 1982 and July 7, 1982. The applicant has also submitted a copy of a receipt dated April 10, 1982 in the name of [redacted] from [redacted] Parts in Pomona. These

documents are some evidence in support of the applicant's residence in the United States for some part of 1982.

The record contains a copy of a payroll change notice under the name of [redacted] dated June 20, 1983. The record also contains a copy of page 1 of the applicant's Mexican passport [redacted], which reveals that the passport was issued in Mexico on June 21, 1983. The applicant has also submitted page 31 of the passport, which reveals that on June 23, 1983 in Mexico he was issued a multiple-entry B-2 visitor's visa, and that he entered the United States on July 2, 1983 at El Paso using this visa. The applicant has also submitted a copy of a 1983 W-2 form from [redacted] Products, Inc., under the name of [redacted]. These documents are some evidence in support of the applicant's residence in the United States for some part of 1983.

The AAO finds that the applicant has not established he used an assumed name or alias. The regulation at 8 C.F.R. § 245a.2(d) states in pertinent part that:

> (2) *Assumed names* - (i) *General.* In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name . . . .The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirements of this paragraph documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant.
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> (ii) *Proof of common identity.* The most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to affiant under the assumed name in question will carry greater weight.

The documents which the applicant submits in the name of [redacted]ail to establish this name as the applicant's alias or assumed name because they do not comply with the above cited regulation. For instance, the applicant has not submitted any documents issued in the assumed name which identify the applicant by photograph, fingerprint or detailed physical description. Further, the applicant has not submitted any witness statements from persons with knowledge of the applicant's use of the assumed name. For these reasons, the applicant has failed to establish that he used the name [redacted] as an assumed name or alias, and any documents in that name will be given no weight.

The applicant has submitted a copy of a rent receipt dated August 1, 1984 regarding the premises [redacted], signed by witness [redacted]. This document is some evidence in support of the applicant's residence in the United States for some part of 1984.

The record contains a copy of page 30 of the applicant's Mexican passport [redacted], which contains a United States entry stamp dated March 30, 1988 in Los Angeles. This document is some evidence in support of the applicant's presence in the United States for some part of 1988.

The applicant has also submitted copies of four photographs. The photographs are undated and the persons in the photographs have not been identified by name. These photographs have no probative value.

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 and a Form I-687, application for status as a temporary resident, filed in 1990 to establish the applicant's CSS class membership. 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 and his absences from the United States during the requisite statutory period.

At the time of his interview on the I-485 application, the applicant stated that he first entered the United States in 1973, and that he entered the United States with a visa on multiple occasions during the requisite period. In the I-485 application, filed in 2001, the applicant listed 1986 as the date of his last entry into the United States.

In the I-687 application, filed in 1990, the applicant listed July 1987 as the date of his last entry into the United States. The applicant listed residences and employment in the United States beginning in January 1981. He listed three absences from the United States during the requisite period, from June 1983 to July 1983, in July 1987, and in March 1988, respectively. In a class member worksheet, filed contemporaneously with the I-687 application, he listed his first entry into the United States as being in January 1981, which is inconsistent with his testimony at interview that he first entered the United States in 1973. Further, the information contained in the I-687 application is inconsistent with the information contained in the record that the applicant had at least two additional absences from the United States: in June 1981, when he obtained a passport in Mexico and in February 1982, when he obtained a visa in Mexico.

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 in the record regarding the date of the applicant's initial entry into the United States and the dates of his absences from 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). The 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.

Further, the application may not be approved as the evidence establishes that the applicant is inadmissible to the United States, as one who has sought through fraud or misrepresentation to procure an immigration benefit under the Act. *See* Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). As noted above, the record reflects that on June 20, 1981, February 13, 1982, July 2, 1983 and March 30, 1988, the applicant was admitted to the United States as a valid nonimmigrant visitor, without disclosing that he was an intending immigrant with respect to those entries. In order to qualify for the visitor's visa, the applicant would have misrepresented that he was not an intending immigrant. The United States Department of State will not issue a nonimmigrant visitor's visa to an intending immigrant, and if the applicant had disclosed his true intentions he would not have been granted the visas. *See,* section 101(a)(15)(B), 8 U.S.C. § 101(a)(15)(B); 9 FAM 41.31. In addition, the record reflects that on February 13, 1982, July 2, 1983 and March 30, 1988, the applicant was admitted to the United States as a valid nonimmigrant visitor, without disclosing that he had violated the terms of his visitor's visa by failing to file quarterly or annual address notifications as required prior to December 29, 1981.

Based on the above, the AAO finds that the applicant misrepresented his intentions in order to obtain an immigration benefit. An alien is inadmissible if he seeks through fraud or misrepresentation to procure an immigration benefit under the Act. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Thus, the applicant is inadmissible and ineligible for legalization benefits.

Pursuant to section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), the cited ground of inadmissibility may be waived in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. 8 C.F.R. § 245a.2(k)(2). The record indicates that the applicant has filed a Form I-690, Application for Waiver of Grounds of Excludability (now referred to as Inadmissibility), however, the applicant has not stated the reason(s) for waiving this ground of inadmissibility, nor has he submitted any documentation in support of the waiver application. Although this ground of inadmissibility is waivable, even if the applicant were to be granted a waiver he remains ineligible for failure to establish his continuous unlawful residence.

The applicant has not established his continuous, unlawful residence in the United States from a date prior to January 1, 1982 through May 4, 1988. The applicant has not established that he is admissible to the United States nor has he filed a properly completed request for a waiver of the grounds of inadmissibility to which he is subject. 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 based upon its withdrawal. This decision constitutes a final notice of ineligibility.