U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

L1

FILE: [redacted] Office: NEW YORK Date: FEB 26 2008

MSC 05 025 10008

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.,* CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.,* CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Act) and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant 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. Specifically, the director considered the applicant's Form I-687 application and documents submitted in support of his claim, as well as his testimony and prior applications for asylum and cancellation of removal contained in the record. The director noted that the applicant had provided contradictory information in his prior applications for asylum and cancellation of removal, in which he claimed to have entered the United States in February 1988. The director found that notwithstanding the inconsistencies noted, the evidence submitted in support of the instant application, which consisted primarily of affidavits, was insufficient to establish the applicant's eligibility for the benefit sought by a preponderance of the evidence. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel for the applicant asserts that the denial of the application was contrary to the regulations and the Settlement Agreements, and in violation of the applicant's due process rights. Counsel contends that the applicant established that he entered the United States prior to January 1, 1982 and resided here for the duration of the requisite period, with the exception of one brief absence. Counsel argues that the questions raised in the director's Notice of Intent to Deny (NOID) were never addressed during the applicant's interview with a Citizenship and Immigration Services (CIS) officer, and that the interview was not held in good faith. Counsel asserts that the affidavits submitted by the applicant were sufficient to warrant approval of the application for temporary residence.[1]

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant

[1] Counsel for the applicant indicated on the Form I-694, Notice of Appeal Under Section 210 or 245A of the Immigration and Nationality Act, that she would forward a brief to the AAO within 30 calendar days. The appeal was filed on June 8, 2006. On September 10, 2007, after being contacted by the AAO to determine whether a brief had been submitted, counsel replied that all evidence available to the applicant has already been submitted.

must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

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

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period . Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to CIS on October 25, 2004. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed that he resided at [redacted] in Bronx, New York from 1981 until 1987, and subsequently resided at [redacted] in Bronx, New York from 1987 until 1993. At part #33, where applicants are asked to list all employment in the United States, the applicant stated that he was employed by Tryall Ltd. in

Jamaica, New York from 1981 until 1988. It is noted that the applicant was born in November 1966 and was only 14 years old for most of 1981.

As noted above, the applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). Pursuant to the regulation at 8 C.F.R. § 245a.2(d)(3) documentation an applicant may submit to establish proof of continuous residence in the United States may include, but is not limited to: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following evidence:

- A letter dated June 8, 1990 from of the Masjid Malcolm Shabazz, located in New York, New York. [redacted] states that the applicant was a member of the Muslim community and attended various prayer services since January of 1981. According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v), attestations from churches or other organizations should, in part, state the address where the applicant resided during the membership period, establish how the author knows the applicant, and establish the origin of the information being attested to. The statement from Mr. [redacted] is vague and fails to meet these requirements. In addition, as discussed further below, the applicant indicated on a Form I-589, Request for Asylum in the United States filed on June 24, 1991 that he is a member of the Evangelical Christian Church and has feared imprisonment in Gambia because of his Christian faith, thus raising questions regarding the credibility of the letter from the mosque. Because of this inconsistency, and because it does not meet the regulatory guidelines, this letter is lacking in probative value.

- Three form-letter "Affidavits of Witness" from [redacted] and a third affiant named "[redacted] whose surname is illegible. Each affiant claims to have been personally acquainted with the applicant in the United States, and to have personal knowledge that the applicant resided in Bronx, New York from February or March 1981 until the date they executed their affidavits in May 1990. Where asked to indicate how they are able to date the beginning of their acquaintance with the applicant in the United States, each affiant stated, "Friendly." The affiants provided no specific information as to how, when or under what circumstances they met the applicant, how they date their acquaintance with him, what their relationship was during the requisite period, whether the affiants themselves resided in the United States during the requisite period, the address at which the applicant resided, or information regarding how they came to have direct, personal knowledge of the applicant's continuous residence in the United States. The significant lack of detail that would corroborate the credibility of the affiants' claimed relationship with the applicant diminishes the probative value of these affidavits. Furthermore, none of the

affiants provided a telephone number at which they could be reached, and their statements are therefore not readily amenable to verification.

- An "Affidavit of Residence" executed by [redacted] who states that he resides at [redacted] Bronx, New York, and that the applicant resided with him at this address from 1981 until 1987. [redacted] states that all rent receipts and household bills were in his name, but the applicant contributed towards their payment. The affidavit is dated May 22, 1990. Although not required to do so, it is noted that [redacted] did not provide proof of identification, nor any evidence that he resided at this address for the period indicated. [redacted] does not state exactly when or under what circumstances he first met the applicant or how he came to offer room and board to and collect rent from the applicant when he was 14 years old. Although he claims that the applicant resided with him for a period of seven years, [redacted] offers no details of any events or circumstances of the applicant's residence or any other specific information that would lend credibility to the claimed relationship. Furthermore, the affiant did not provide a telephone number at which he could be reached and his statement is therefore not readily amenable to verification. Based on the significant lack of detail, this affidavit has minimal probative value in supporting the applicant's claim of continuous residency in the United States during the requisite period.

- A notarized letter dated May 17, 1990 from [redacted] president of Tryall-L.T.D. located in Queens, New York. [redacted] states that the applicant was employed by this company from 1981 until 1988, and that he earned an hourly wage of $5.00. This letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; periods of lay-off; exact duties with the company; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by Mr. Sammy does not include information required by regulations, such as the applicant's exact dates of employment, job duties and address at the time of employment. He did not state whether the information was obtained from company records or whether CIS may have access to the records.

- A partially-completed form entitled "CSS/LULAC Legalization and LIFE Act Adjustment Form to Gather Information for Third Party Declarations." The name of the applicant has not been completed on this form, nor did the person completing the form indicate his or her own name, address, and other requested information. Because it cannot be clearly associated with the applicant, this evidence has no probative value.[2]

---

[2] It is noted that the applicant later referred to a statement from a [redacted], and the record does contain a copy of a New York State driver license for this individual. Upon careful review of the record, the AAO can find no statement that was clearly provided by [redacted]. It will not be assumed that this

The applicant was interviewed by a CIS officer in connection with his application for temporary residence on February 13, 2006. On February 16, 2006, the district director issued a notice of intent to deny the application. With respect to the evidence submitted in support of the instant application, the director acknowledged the affidavits from third-party individuals, but noted that none of the affiants had provided proof of their identity nor any evidence that they were in the United States during the requisite period. The director advised that credible affidavits are those that include some document identifying the affiant, some proof the affiant was in the United States during the requisite period, and some proof of a relationship between the affiant and the applicant. The director noted that the letter from Tryall Ltd. was deficient and was not accompanied by evidence that the company was even in existence during the requisite period. Further, the director acknowledged the letter from Masjid Malcolm Shabazz, and noted that CIS had attempted to contact the person who signed the letter. CIS was informed that [redacted] had not been at the mosque for over ten years thus the information could not be verified.

In addition to noting these deficiencies, the director advised the applicant that she had reviewed the applicant's administrative record and found inconsistencies when comparing the instant applicant to the statements made by the applicant in an earlier Form I-687 application, an asylum application, and a removal proceeding. The director noted that the applicant previously signed an affidavit as a declaration for LULAC class membership on July 19, 1990, on which he stated that he had departed the United States from December 21, 1987 until February 27, 1988, which represents a trip of more than 45 days. The director observed that the applicant had indicated on his current Form I-687 and during his interview that his only absence from the United States was from December 1987 until February 1988, but that other evidence in the record does in fact show other absences. Specifically the director noted that the record contains: (1) evidence that the applicant was issued a Gambian passport in Banjul in August 2002;[3] (2) an affidavit signed by the applicant in an administrative proceeding in New York, New York, in which he stated that he had come to the United States on February 27, 1988; (3) evidence that, during removal proceedings in June 2001, the applicant stated under oath to an immigration judge that he had arrived in the United States in 1988; (4) an asylum application (Form I-589) filed on June 24, 1991, in which the applicant claimed to have entered the United States on February 27, 1988; (5) evidence that when interviewed in connection with his asylum application, the applicant testified that he was arrested in Gambia in 1986 and 1987 for preaching in the streets; and (6) a signed Form G-325, Biographic Information, on which the applicant listed his foreign address as Dembarunda, Gambia until February 1988.

The director advised the applicant that he failed to submit documents that would establish by a preponderance of the evidence his continuous residence in the United States during the requisite period.

---

form was completed by [redacted] in support of this applicant's application for temporary residence. As noted above, the form identifies neither the applicant nor the name of the person providing information.

[3] The applicant's administrative record also contains a copy of a passport issued to the applicant in Gambia on October 12, 1987. The applicant claims to have been in the United States at that time.

In response to the notice of intent to deny, counsel for the applicant asserted that the applicant established eligibility for the benefit sought, and objected to the fact that the questions raised in the notice were not addressed during the applicant's interview with a CIS officer. Counsel also questioned why no attempt was made to contact [redacted]. As noted above, the record contains neither an affidavit from [redacted] nor any contact information for him.

In rebuttal to the Notice of Intent to Deny, the applicant submitted a one-page affidavit in which he briefly addressed the director's findings. The applicant asserts that he did not have any other absences from the United States other than the trip to Gambia from December 1987 until February 1988. With respect to the passport issued to him in 2002, he states that he applied for the passport in 2001, from the United States, and that the passport was never used.

The applicant acknowledged that on November 12, 1999, he stated on a Form EOIR-42B, Application for Cancellation of Removal, that he came to the United States on February 27, 1988. The applicant explained that he gave this date because he only needed to establish that he had resided in the United States for at least ten years. He stated that he provided the same date of entry to the immigration judge for the same reason, and noted that his departure from the United States in 1987 had disturbed his continuous residence for the purpose of cancellation of removal.

The applicant acknowledges that he filed a Form I-589, Request for Asylum in the United States, but states that he "did not prepare the application or know the content of the application." He states that he was never arrested in Gambia in 1986 or 1987. Finally, he explained that he indicated on a Form G-325 an address in Gambia until February 1988 because that was the address he had in Gambia from December 1987 until February 1988.

With respect to the evidence submitted in support of the instant application for temporary residence, the applicant stated that he was paid in cash while employed by Tryall Ltd. from 1981 until 1988 and has no other evidence to submit. The applicant also emphasized that the affidavits he submitted were prepared in 1990 and he no longer has contact with the individuals who signed them.

The director denied the application on May 19, 2006. In denying the application, the director acknowledged the information submitted in response to the notice of intent to deny, but found the information insufficient to overcome the grounds for denial stated in the NOID. The director concluded that the new evidence and evidence already included in the record was insufficient to establish the applicant's eligibility for temporary residence under Section 245A of the Act. The director also found that the applicant's acknowledged trip outside the United States from December 21, 1987 until February 27, 1988 rendered the applicant ineligible pursuant to 8 C.F.R. § 245a.2(h)(i)(l), as this trip was longer than 45 days in length. Therefore, even if the applicant had established his arrival to the United States prior to January 1, 1982, this trip would constitute an interruption in his continuous residence.

On appeal, counsel for the applicant once again asserts that the applicant established that he entered the United States prior to January 1, 1982 and resided in the United States continuously except for one "brief

absence" from December 1987 until February 1988. Counsel re-emphasizes that the questions raised in the NOID were not addressed during the applicant's interview with a CIS officer. Counsel alleges that the interview was not conducted in good faith and claims that the applicant was only asked three questions regarding his application during an interview that lasted no more than five minutes. Counsel contends that CIS "did not intend to approve this application," and asserts that CIS violated the applicant's due process rights by denying the application.

Upon further review of the record, the AAO observed additional information in the record that seriously compromises the credibility of the applicant's claims. On January 18, 2006, the AAO issued a letter to the applicant advising him of this derogatory information and afforded him 15 days to respond. The AAO's notice stated, in part:

> In support of your application, you submitted a notarized letter dated May 17, 1990 from Roy Sammy, who identified himself as the president of Tryall-L.T.D. located in Queens, New York. M[redacted] stated that you were employed by this company from 1981 until 1988, at an hourly wage of $5.00. It is noted that according to publicly available records held by the New York State Secretary of State, Division of Corporations, Tryall Ltd. was established in New York in March 1984. Six other companies with names beginning with "Tryall" are listed in the public records, but none of these companies appears to have been in existence prior to 1985. (See http://www.dos.state.ny.us/corp/corpwww.html.) If the company did not exist prior to March 1984, [redacted] statement that you worked for the company beginning in 1981 is clearly not true.
>
> On your Form I-687 and during your legalization interview on February 13, 2006, you stated that you first entered the United States in 1981 and that have traveled outside the United States one time subsequent to that date, from December 1987 until February 1988. You provided similar information on a Form I-687 application you completed in 1987. However, your administrative file contains a copy of a passport (number 81195) issued to you in Banjul, Gambia on October 12, 1987, and bearing a stamp of the Passport Office, Gambia Police. This evidence contradicts your testimony that you were residing and physically present in the United States at that time.
>
> Your record also contains a copy of a Form I-589, Request for Asylum in the United States filed on June 24, 1991, and signed by you under penalty of perjury. You stated on the Form I-589 that you entered the United States on February 28, 1988, that you were unmarried, and that you were a member of the Evangelical Christian Church. You indicated that you had been detained by police in Gambia on many occasions while preaching in the streets and feared imprisonment should you return to your home country, due to your Christian faith. According to the information you provided on a Form G-325A, Biographic Information, submitted with your asylum application, you resided in Dembakunda, Gambia until February 1988. You indicated no addresses in the United States prior to this date. This information contradicts your claim that you have resided in the United States continuously since 1981.

It is noted that your record also contains a letter signed by [redacted] of Masjid Malcolm Shabazz in New York, who stated that you are a member of the Muslim community and that you attended prayer services at the Masjid since January 1981. This letter, which is dated June 1990, contradicts the information provided in your asylum application filed in July 1991, in which you indicated that you are a Christian who has faced harassment and detainment based on your religion in Gambia during 1986 and 1987.

The director issued a Notice of Intent to Deny your application for temporary residence on February 16, 2006, highlighting some of the discrepancies between the statements made in your current legalization application and your prior asylum application. In response to the director's findings, you stated that although you filed an application for asylum, you "did not prepare the application or know the content of the application."

While you claim, without explanation, to have filed your asylum application without knowledge of the content of the application you signed, the record shows that you were in fact interviewed under oath on July 18, 1991 and at that time confirmed the contents of the application to be true. Specifically, you testified under oath that you were arrested in Gambia one time in 1986 and twice in 1987 for preaching the Christian faith in the streets. In a Notice of Intent to Deny issued by the Arlington, Virginia Asylum Office on October 3, 2004, you were informed that your testimony was given in a credible manner and the asylum office had no doubt that the incidents occurred. You now deny that you were ever arrested in Gambia in 1986 or 1987.

Your claims that you were never arrested in Gambia and that you submitted an asylum application without any knowledge of its contents are simply not credible. Moreover, your repudiation of prior statements made under oath to an asylum officer seriously undermines your credibility.

Your record shows that on or about June 15, 2001, you filed a Form EOIR-42B, Application for Cancellation of Removal on which you stated that you first arrived in the United States on February 27, 1988 and had no residences in this country prior to that date. You also stated on this form, for the first time, that you were married in Gambia on December 15, 1987, which is inconsistent with information you provided on your 1990 application for temporary resident status and on your 1991 application for asylum.

You had a hearing before an Immigration Judge in removal proceedings on March 11, 2002. At that time, you testified under oath that you arrived in the United States in 1988 at the age of 21 years old. You also testified that you and your family attend a mosque and could continue to do so should you return to Gambia, thus contradicting your previous testimony made under oath that you are a Christian who would face persecution and imprisonment should you return to Gambia.

In summary, your statements made under penalty of perjury on your asylum application, cancellation of removal application, and Form G-325A, as well as testimony given by you under oath in your hearing before an Immigration Judge and in an interview with an asylum officer, all indicate that you resided in Gambia until February 1988. This sworn testimony contradicts your current claim on the Form I-687 that you have lived in the United States since 1981. You have also made contradictory claims under oath and under penalty of perjury regarding your marital status and religion. Further, you have submitted an employment letter from Tryall Ltd. which is highly suspect, given that it states that you worked for the company three years before it was incorporated.

Because of this long pattern of submitting inconsistent testimony under oath in immigration proceedings, you have seriously undermined your own credibility as well as the credibility of your claim of continuous residence in this country for the period from prior to January 1, 1982 to May 4, 1988.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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, 591-92 (BIA 1988). The above derogatory information indicates that you have misrepresented your dates of initial entry and residence in the United States and thus casts doubt on your eligibility for temporary resident status.

The applicant was advised that he must submit substantial evidence from credible sources addressing, explaining and rebutting the discrepancies noted. On February 6, 2008, the applicant, through counsel, submitted a letter from [redacted], First Secretary of the Permanent Mission of the Republic of Gambia to the United Nations. Secretary Faati "confirms that Gambian national[s] who are resident abroad can obtain **Gambian passport[s]without ever travelling to The Gambia for that purpose."** In her cover letter dated February 1, 2008, counsel states: "Enclosed please find the requested document. We are trying to obtain the original, however, fifteen days is not enough time." As the letter from [redacted] is an original document, and no other evidence was submitted, it is unclear to what "original document" counsel is referring. Regardless, no additional evidence has been submitted as of this date.

The letter from [redacted] does not sufficiently address the considerable deficiencies and inconsistencies noted in the AAO's notice. The AAO never questioned whether it was possible for a Gambian national to obtain a Gambian passport outside of Gambia. The fact remains that the applicant obtained a Gambian passport on October 12, 1987 that bears a stamp reading "Passport Office – Gambia Police." Absent additional explanation regarding Gambia's passport procedures, there is no reason to conclude that this passport was issued in the United States, where the applicant claims to have been residing as of that date.

The applicant clearly has not adequately addressed his testimony given in previous proceedings which directly contradicts evidence offered in support of the instant application for temporary residence. Moreover, the evidence the applicant has submitted to demonstrate that he resided in the United States for the requisite period is not relevant, probative, and credible. The applicant has not provided any evidence of residence in the United States for the duration of the requisite period or of entry to the United States before January 1, 1982 except for his own inconsistent assertions and the statements and affidavits discussed above. The statements and affidavits lack credibility and probative value for the reasons noted.

In addition, neither counsel nor the applicant have addressed on appeal the director's finding that the applicant's sole acknowledged absence from the United States, from December 1987 until February 27, 1988, at which time the applicant entered the United States with a B-2 visa, was longer than 45 days and thus makes him ineligible for the benefit sought. An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i). The applicant has not claimed that his return to the United States was delayed for emergent reasons. The applicant indicated that he traveled to Gambia in December 1987 to "visit family." Further, as noted above, the record contains a copy of a passport issued to the applicant in Gambia on October 12, 1997, and a copy of the applicant's marriage certificate, which indicate that he was married in Gambia on December 15, 1997, thus suggesting that the dates provided by the applicant for his alleged absence from the United States were not accurate. While counsel refers to the applicant's trip to Gambia as a "brief absence," this trip of more than 60 days does in fact render the applicant ineligible to adjust his status under section 245A of the Act.

It is noted that counsel contends that the applicant's rights to procedural due process were violated. This claim appears to be based on counsel's perception that CIS did not conduct the applicant's interview in good faith, and did not specifically address during the interview questions that were subsequently raised in the director's notice of intent to deny. Upon review, the applicant has not shown that any violation of the regulations resulted in "substantial prejudice" to them. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The respondents have fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the applicant's case. All grounds for denial were set forth in a clear and detailed manner in the notice of intent to deny the application and the applicant was given 30 days in which to submit a response. It is unclear how the director's failure to question the applicant regarding the many inconsistencies and deficiencies in the record of proceeding during his interview resulted in "substantial prejudice." As previously discussed, the petitioner has not met its burden of proof and the denial was the proper result under the regulations. Accordingly, the applicant's claim is without merit.

Furthermore, as discussed, the record indicates that the applicant has misrepresented his dates of initial entry and residence in the United States. Section 212(a)(6)(C) of the Act provides:

> Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

By filing the Form I-687 application, misrepresenting his dates of initial entry and residence in the United States, and providing false testimony under oath, the applicant has sought to procure benefits provided under the Act through fraud and willful misrepresentation of material facts. By engaging in such actions, the applicant has seriously undermined his own credibility as well as he credibility of his claim of continuous residence in this country during the requisite period. Because the applicant has submitted false testimony under oath, the AAO cannot accord any weight to his claims.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Accordingly, the applicant has not established his eligibility for the benefit sought.

Regarding the instant application, the applicant's failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the applicant and the remaining documentation. As stated above, 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. *See Matter of Ho,* 19 I&N Dec. at 591-92.

In conclusion, the applicant's pattern of providing false testimony and the absence of sufficiently probative, credible supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--, supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. Additionally, because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted false testimony under oath, we affirm our prior finding of fraud.

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