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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] MSC 04 356 10963

Office: NEW YORK

Date: JUN 10 2009

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. 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.

John F. Grissom
Acting 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 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period. In so finding, the director reviewed the evidence the applicant provided as well as testimony from his interview at Dulles International Airport on July 3, 1999. At his interview, the applicant revealed that he entered the United States for the first time in December 1979, that he remained for fifty-four or fifty-five days, and that he did not enter this country to live and work until 1987.

On appeal, counsel states the applicant's Form I-687 supports that he came to the United States for the first time in 1979 and stayed for less than two months, left the country and returned in January 1981. Counsel further states the applicant's interview at Dulles International Airport on July 3, 1999 was for a limited purpose and did not actually go into detail about the applicant's living and working history in the United States and therefore, it cannot be used as a basis to deny his application. Counsel indicated that she would submit a brief to the AAO within 30 days; however, she has not done so. Therefore, the record is considered complete.

On July 3, 1999, the applicant arrived on a flight from Hong Kong and applied for admission into the United States at Dulles International Airport in Virginia. He was interviewed by an Immigration Inspector concerning his request to be admitted to this country and admitted that he had attempted to enter using a Form I-512, Authorization for Parole of an Alien into the United States, containing false information. His interview was recorded on a Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, which he signed on July 3, 1999. At his interview, he was asked "When did you first enter the United States and how?" He answered "In December 1979, from the Canada Border." He was asked "How long did you stay on this trip?" He responded "54 or 55 days." He was then asked "When did you enter the U.S. with the intent to live and work here?" He answered "1987." The applicant's Form I-296, Notice and Order of Expedited Removal/Departure Verification, shows that he was removed from this country on Flight [REDACTED] departing from John Fitzgerald Kennedy International Airport in New York on July 18, 1999. Counsel argues that the applicant's interview at Dulles International Airport on July 3, 1999 was for a limited purpose and did not actually go into detail about the applicant's living and working history in the United States and therefore, it cannot be used as a basis to deny his application. Counsel did not offer any evidence in support of her assertions. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

Inasmuch as the applicant has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal shall be summarily dismissed.

In these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

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