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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



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

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FILE:

[REDACTED]

Office: LOS ANGELES

Date: NOV 30 2010

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. All documents have 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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's temporary resident status was terminated by the Director, Los Angeles, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant failed to file the application for adjustment of status from temporary to permanent residence within the 43-month application period.

On appeal, the applicant's current counsel states that the applicant relied upon representations made by his former attorney that he had until August 22, 2009 to timely file the Form I-698 adjustment application. Counsel asserts that the applicant's former attorney compounded his initial error regarding the date the forty-three month application period expired by waiting until September 27, 2009 to file the applicant's Form I-698 adjustment application. Counsel claims that the applicant received ineffective assistance of counsel from his former attorney and indicates that the requirements set forth in *Matter of Lozado*, 19 I. & N. Dec. 637, Interim Decision 3059, 1988 WL 235454 (BIA), have been met in order to allow the consideration of the claim of ineffective counsel. Counsel submits documentation in support of the appeal.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if the alien fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date he or she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on November 23, 2005. The 43-month eligibility period for filing for adjustment expired on June 23, 2009. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on September 27, 2009. The director therefore denied the untimely Form I-698 adjustment application, and subsequently terminated the applicant's temporary resident status.

Counsel's remarks on appeal relating to the ineffective assistance provided by the applicant's previous attorney are noted. Counsel provides an affidavit from the applicant detailing his previous attorney's ineffective counsel, an attorney-client agreement written in the Spanish language, a letter from the applicant's current counsel to his prior attorney informing him of the applicant's claim and the opportunity to respond, and a completed State Bar of California Attorney Complaint Form dated January 11, 2010 as evidence to demonstrate the requirements set forth in *Matter of Lozado, Id.* had been met. In order for a claim of ineffective counsel to be considered under *Matter of Lozada*, the claim must be accompanied by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and the opportunity to respond, and that the claim reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violations of counsel's ethical or legal responsibilities, and if not, why not.

Although counsel provides an attorney-client agreement entered into by the applicant and his prior attorney and written in the Spanish language, the probative value of this document is negligible as the document is not accompanied by a certified translation into the English language as required by 8 C.F.R. § 103.2(b)(3). Consequently, it cannot be determined what actions were to be taken by the applicant's prior attorney and what representations this individual did or did not make to the applicant under this attorney-client agreement as required under

Counsel includes a copy of a completed Form dated January 11, 2010. In order to determine whether this complaint had actually been filed, an AAO officer placed a call to of the Court in Los Angeles, California at at approximately 1:15 P.M. on November 3, 2010. executed a search of complaints filed in 2010 and reported that no complaints had been filed against the applicant's former attorney from January 1, 2010 up through November 3, 2010. also executed a search of complaints filed in 2010 using both the applicant's name and the name of his current attorney and found no record of complaints filed by either party from January 1, 2010 through November 3, 2010. Further, it must be noted that neither the applicant nor current counsel provides any explanation as to why this complaint was not filed. Therefore, it must be concluded that a complaint has not been filed with appropriate disciplinary authorities with respect to any violations of previous counsel's ethical or legal responsibilities and no explanation had been furnished as to why such complaint was not filed as required under

The applicant and his current counsel have failed to establish compliance with two of the three requirements put forth in for consideration of the claim of ineffective assistance by the applicant's prior attorney and this issue shall not be discussed any further.

United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) and private voluntary organizations widely publicized the procedures of the amnesty program, including the necessity of applying for permanent residence. If the applicant required assistance in pursuing his application, such assistance was widely available with inquiries to USCIS. Furthermore, the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. The burden to duly file the Form I-698 adjustment application in a timely manner remains with the applicant. 8 C.F.R. § 245a.3(d).

The statements on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

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