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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

[REDACTED]

LI

DATE: AUG 22 2012

Office: CHICAGO

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application to Adjust Status from Temporary to Permanent Resident Status 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 application to adjust to permanent resident status pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a was denied by the Director, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant was granted temporary resident status on October 25, 2006, under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. The director denied the application, finding that the applicant failed to file his application in a timely manner. The applicant was required to file an application to adjust status from temporary to permanent resident within forty-three (43) months of receiving his temporary resident status, which would have been May 25, 2010. See 8 C.F.R. § 245a.3(b)(1). Pursuant to section 245A(b)(2)(C) of the Act, 8 U.S.C. § 1255a(b)(2)(C), a failure to file an application for adjustment to permanent residence within this statutory filing period will result in the termination of the applicant's temporary residence. The applicant filed his application to adjust status from temporary to permanent resident on September 1, 2010, which is outside the statutory filing period.

On appeal, counsel, on behalf of the applicant, asserts that the reason for his failure to file in a timely manner was due to ineffective assistance of his former counsel. Counsel asserts that the applicant's former counsel mistakenly informed the applicant that he had 55 months from the grant of his temporary residency to file his application to adjust status from temporary to permanent resident. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported 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, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

Here, the applicant has submitted the required documentation for a claim of ineffective assistance of counsel. First, the record contains an affidavit from the applicant in which he states that he signed a contract, dated May 1, 2010, with his former counsel to represent him in his application for permanent residency. He states that his former counsel prepared the application with him and incorrectly advised him that he had 55 months to file his application. Counsel submitted a copy of the Retainer Agreement between the National Immigrant Justice Center and the applicant, dated May 1, 2010, for representation of his Form I-698 application. Second, the record contains an affidavit from his former counsel, [REDACTED] stating that she mistakenly advised the applicant that he was required to file his Form I-698 within 55 months of the grant of his temporary resident status. She further states that she is solely responsible for failing to timely file his Form I-698 application and that she advised him of his right to file a complaint with the appropriate disciplinary authority. Finally, on appeal, counsel states that the applicant has not

filed a formal complaint with the appropriate disciplinary authority, the Attorney and Registration Disciplinary Committee of the Supreme Court of Illinois, because his former counsel has fully disclosed her error. Based on the above, the applicant has satisfied the requirements in *Matter of Lozada*. The director's decision will be withdrawn and the 43 month filing deadline shall be tolled to the date the applicant filed his Form I-698 application.

**ORDER:** The appeal is sustained.