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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]

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DATE: AUG 2 2 2012 OFFICE: CHICAGO FILE: [redacted]

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.

Perry Rhew
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, Chicago. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

On April 14, 2005, the applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act) pursuant to the terms of the CSS/Newman Settlement Agreement. On October 25, 2006, the application was approved. On August 15, 2011, the director terminated the applicant's temporary resident status, finding that he failed to timely file his Form I-698 application.

On April 12, 2012, counsel, on behalf of the applicant, submitted a Form I-694, Notice of Appeal of Decision Under Section 210 or 245A. On appeal, counsel asserts that the director erred in failing to toll the 43 month filing deadline for the Form I-698 application due to ineffective assistance of counsel. The AAO will consider the applicant's claim de novo, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).[1]

The regulations at 8 C.F.R. § 245a.2(u) states:

> The temporary resident status may be terminated upon the occurrence of any of the following:
>
> (i) It is determined that the alien was ineligible for temporary residence under section 245A of this Act;
>
> (ii) The alien commits an act which renders him or her inadmissible as an immigrant, unless a waiver is secured pursuant to § 245a.2(k)(2).
>
> (iii) The alien is convicted of any felony, or three or more misdemeanors;
>
> (iv) The alien fails to file for adjustment of status from temporary resident to permanent resident on Form I-698 within forty-three (43) months of the date he/she was granted status as a temporary resident under § 245a.1 of this part.

On appeal, counsel simultaneously filed an appeal of the applicant's Form I-698 application. The AAO determined that the director erred and applicant satisfied the *Matter of Lozada* requirements for a claim of ineffective former counsel. The applicant asserted that his 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. The applicant presented the required documents to establish his claim of ineffective former counsel. Given this, the AAO

[1] The AAO conducts appellate review on a *de novo* basis. 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).

withdrew the director's Form I-698 decision and the applicant's appeal was sustained. Accordingly, the director's decision to terminate the applicant's temporary resident status will be withdrawn and the appeal is sustained.

ORDER: The appeal is sustained.