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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-J-L-

DATE: MAR. 30, 2016

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, a native and citizen of El Salvador, seeks temporary protected status (TPS). *See* Immigration and Nationality Act (the Act) section 244, 8 U.S.C. § 1254a. Temporary protected status provides lawful status and protection from removal for foreign nationals, of specifically designated countries, who register during designated periods, satisfy country-specific continuous residence and physical presence requirements, are admissible to the United States, are not firmly resettled in another country, and are not subject to certain criminal- and security-related bars.

The Director, Vermont Service Center, denied the application. The Director denied the Applicant's Form I-821 because the Applicant did not establish his eligibility for late registration or his continuous residence in the United States since February 13, 2001, and continuous presence in the United States since March 9, 2001. We dismissed a subsequent appeal. We found that there was sufficient evidence to satisfy the Applicant's burden of proof for continuous residence and continuous physical presence in the United States during the requisite periods, and withdrew the Director's findings on these grounds. However, we concurred with the Director's finding that the Applicant had failed to establish eligibility for late registration. We determined that the applicant did not meet the requirements for articulating a claim of ineffective assistance of counsel under *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988).

The matter is now before us on a combined motion to reopen and reconsider. On motion, the Applicant asserts that he was denied the ability to file for TPS because of a notary personating an attorney. Citing *Matter of Lozada*, 19 I&N Dec. at 639, the Applicant contends that the only issue on motion is whether he qualifies for late registration due to ineffective representation by a non-lawyer who claimed to be, and was believed by the Applicant to be, an attorney. The Applicant submits a copy of a formal complaint filed on [REDACTED] 2012, by the Applicant to the [REDACTED] and a copy of a letter dated September 26, 2013, acknowledging receipt of the applicant's complaint. The Applicant cites *Matter of J-E-C*, 24 I&N Dec. 710 (A.G. 2009), in support of his assertion that the ineffective assistance of a non-lawyer reasonably believed to be an attorney can be sufficient to meet the *Lozada* requirements.¹

¹ We note that the Attorney General subsequently vacated *Matter of J-E-C* in *Matter of Compean, Bangaly, & J-E-C*, 25 I&N Dec. 1 (A.G. 2009), to allow the Acting Director for the Executive Office for Immigration Review to initiate rulemaking procedures to evaluate the *Lozada* framework. However, as we explain further in this decision, we find other legal support for the Applicant's argument,

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Upon de novo review, we will grant the motion, and the matter will be remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

To claim ineffective assistance of an applicant's counsel, an applicant must meet the requirements of *Matter of Lozada*. Under *Matter of Lozada*, an affected party who claims ineffective assistance of counsel must 1) set forth in a detailed affidavit the agreement of representation and how counsel's representation was deficient; 2) inform the impugned counsel of the alleged incompetence and afford an opportunity to respond; and 3) indicate whether the party has filed a complaint – and, if not, why-- with the appropriate disciplinary authorities asserting any violation of counsel's ethical or legal responsibilities. 19 I&N Dec. at 639. The individual must also demonstrate prejudice from counsel's performance. *Id.* at 4.

The relevant jurisdictions in this case, the Board of Immigration Appeals and Tenth Circuit Court of Appeals, have not issued published decisions establishing whether the ineffective assistance of an individual falsely claiming to be an attorney can constitute a *Lozada* claim. The Third Circuit Court of Appeals, in *Borges v. Gonzales*, 402 F.3d 398, 408 (3d Cir. 2005), did not reach the *Lozada* claim in its decision, but stated that the petitioner, defrauded into believing that he would be represented by an attorney and ordered deported in absentia based on that non-attorney's advice, could surely demonstrate ineffective assistance. Similarly, the Ninth Circuit Court of Appeals, in *Lopez v. INS*, 184 F.3d 1097, 1100 (9th Cir. 1999), did not reach the *Lozada* claim, but indicated that the petitioner, who hired a notary public falsely representing himself as an attorney, appeared to have a meritorious claim for ineffective assistance.

The record reflects that the Applicant filed an initial TPS application on [REDACTED] 2003. The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The Applicant was issued a notice on March 11, 2004, requesting the submission of evidence establishing late registration eligibility under 8 C.F.R. § 244.2(f)(2). The Applicant's TPS application was denied by the Director, Texas Service Center, due to abandonment on [REDACTED] 2004. The Applicant filed a TPS re-registration application on [REDACTED] 2005, which was denied on [REDACTED], 2005, as the Applicant's initial TPS application had been denied. The Applicant filed a subsequent TPS re-registration application on [REDACTED], 2007, which was denied on March 21, 2008, also based on the denial of the applicant's initial TPS application. The applicant filed a subsequent TPS application on [REDACTED] 2012.

The Applicant claims that he originally went to the offices of [REDACTED] a notary holding herself out to him as an attorney, in the beginning of 2000, where he was told that he had no means of legalization. The Applicant starts that he only learned that he could be eligible for TPS from other

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Salvadorians in his state of residence in December 2001. The Applicant indicates that he returned to [REDACTED] between February and April 2002 to file a TPS application, but was told that it was too late to file and to return the following year. The record reflects that [REDACTED] filed an initial TPS application for the Applicant, received on September 13, 2003, well after the initial registration period of March 9, 2001 to September 9, 2002. It is noted that an initial TPS filing between February and April 2002 would have fallen within the initial registration period for El Salvadoran TPS applicant.

The record contains an article from [REDACTED] dated August 15, 2006, stating that multiple lawsuits have been filed against [REDACTED] for breach of contract, fraud, and negligence in immigration matters. The article further indicates that [REDACTED] is being investigated for the unauthorized practice of law in Oklahoma. The record contains an affidavit from the Applicant detailing the Applicant's ineffective assistance of non-counsel claims. The record also contains a letter from the [REDACTED] stating that the Applicant filed a complaint against [REDACTED] on June 7, 2012, but that she has not responded to the grievance. The record reflects that the Applicant presented sworn testimony in immigration court on [REDACTED] 2011, alleging the ineffective assistance of [REDACTED] in filing his TPS application. As noted in our previous decision, the Applicant's failure to file for TPS within the initial registration period or demonstrate eligibility for late registration under 8 C.F.R. § 244.2(f)(2), is the only remaining basis for the denial of his TPS application. As the Applicant has demonstrated that he has met all of the *Lozada* requirements, he has satisfied his burden of demonstrating that his delay in filing for TPS was due to the ineffective assistance of an individual impersonating an attorney.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met. Accordingly, the motion is granted.

ORDER: The motion to reopen and reconsider is granted, and the matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of J-J-L-*, ID# 11654 (AAO Mar. 30, 2016)