

OCT 22 2007

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

ELEAZAR GARCIA FARIAS,

Petitioner,

v.

PETER D. KEISLER,\*\* Acting Attorney  
General,

Respondent.

No. 06-70834

Agency No. A95-564-911

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted October 18, 2007\*\*\*  
Seattle, Washington

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

\*\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: D.W. NELSON, BEAM\*\*\*\*, and RYMER, Circuit Judges.

Eleazar Garcia Farias (“Garcia Farias”) seeks review of the Board of Immigration Appeals’ dismissal of his appeal on the grounds that Section 245(i) of the Immigration and Nationality Act (“INA”) is not subject to equitable tolling.

INA § 245(i) requires that all applicants for status adjustment as the immediate relative of a United States Citizen file I-130 petitions “on or before” April 30, 2001. Garcia Farias hand-delivered a completed I-130 petition to his lawyer two months before the deadline on the understanding that his lawyer would timely file the petition with the Immigration and Naturalization Service (“INS”). Garcia Farias contacted his lawyer to confirm filing shortly before the deadline, but the INS did not receive the petition until November 2001. Garcia Farias seeks to equitably toll the April 30 deadline on the basis of ineffective assistance of counsel. Although we find Garcia Farias’ argument for equitable relief compelling, we are constrained by existing precedent.

In light of *Munoz v. Ashcroft*, 339 F.3d 950, 957 (9th Cir. 2003), INA § 245(i) is a statute of repose and not subject to equitable tolling. Similar to *Munoz*, the deadline in § 245(i) is jurisdictional because the language and structure of the statute set a definite cutoff date that functions independently of any variable or

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\*\*\*\* The Honorable C. Arlen Beam, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

discretion. Garcia Farias contends that the statutory presumption favoring equitable tolling of statutes of limitations set forth in *Albillo-De Leon v. Gonzales*, 410 F.3d 1090, 1098 (9th Cir. 2005), requires equitable tolling under these circumstances. However, the statutory presumption does not apply because cutoff deadlines in immigration status-adjustment statutes are distinct from statutes of limitations and are not subject to equitable doctrines. *Carrillo-Gonzalez v. INS*, 353 F.3d 1077, 1080 (9th Cir. 2003) (“An IJ may not invoke equitable powers to override Congress’s explicit public policy determinations, reflected in the statutory framework for conferring citizenship.”).

PETITION DENIED.