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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

A3

[REDACTED]

FILE: [REDACTED] Office: WASHINGTON DISTRICT Date:

AUG 09 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

[REDACTED]

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. and the Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed. The application remains denied.

The applicant is a native and citizen of Bangladesh who is seeking to adjust his status to that of lawful permanent resident under section 13 of the Act of 1957 ("Section 13"), Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, 8 U.S.C. § 1255b, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

The field office director denied the application for adjustment of status after determining that the applicant had not established: that he performed diplomatic or semi-diplomatic duties; and that compelling reasons prevent his return to Bangladesh. The field office director also noted that the Department of State issued its opinion on May 12, 2008 advising that it could not favorably recommend this matter because the applicant's reasons to remain in the United States are not compelling.

The AAO affirmed the field office director's determination that the applicant failed to establish that he had performed diplomatic or semi-diplomatic services for the [REDACTED] and that he had failed to present compelling reasons that prevent his return to the Bangladesh. As the applicant had not established that he was unable to return to Bangladesh, the AAO did not reach the issue of the applicant's adjustment of status and whether his adjustment would be in the national interest of the United States.

On motion, the applicant submits his affidavit reiterating that he applied for a green card based on his work at the mission and because of the hardship to his two daughters.

The applicant's affidavit does not satisfy either the requirements of a motion to reopen or a motion to reconsider. A motion to reopen must state the new facts to be proved in 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: (1) 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 United States Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The record on motion does not include any new facts. The AAO has considered the difficulties that the petitioner's family may face in returning to Bangladesh; however, as previously determined cultural assimilation and obtaining education in the United States are not compelling reasons as intended by Section 13 that would make the applicant unable to return to Bangladesh. In addition, the applicant does not support his assertion that his two children would be in extreme danger if they returned to Bangladesh. Further, the applicant does not address the issue of his failure to establish that he performed diplomatic or semi-diplomatic duties for the [REDACTED]

Accordingly, the applicant has not provided new facts for consideration and, thus, the motion to reopen will be dismissed.

The applicant also fails to provide any reasons for reconsideration that are supported by pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or USCIS policy. The applicant fails to provide pertinent precedent decisions or evidence that establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

ORDER: The motion is dismissed. The previous decision of the AAO, dated February 23, 2009, is affirmed. The application is denied.