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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

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FILE: [REDACTED] Office: WASHINGTON DISTRICT

Date:

JAN 05 2010

IN RE: [REDACTED]

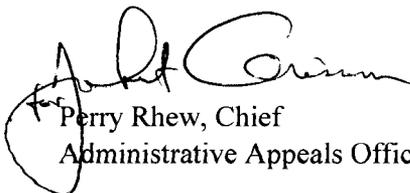
APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. and appealed to the Administrative Appeals Office (AAO). The AAO dismissed the appeal and rejected a subsequent motion to reopen or reconsider because it was not timely filed. The matter is again before the AAO on a motion to reopen and reconsider. The motion will be dismissed and the previous decision to deny the petition will be affirmed.

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 failed to demonstrate that he performed diplomatic or semi-diplomatic duties, that compelling reasons prevent his return to Bangladesh, or that his adjustment would be in the national interest. The applicant appealed the director's decision to deny his application and in its appellate decision, the AAO withdrew the director's determination that the applicant did not perform diplomatic or semi-diplomatic duties, but affirmed the denial of the application on the bases that there were no compelling reasons preventing the applicant's return and that the applicant's adjustment would not be in the national interest. The applicant, through counsel, filed a motion for the AAO to consider new evidence, which the AAO rejected as untimely filed. In this second motion that is currently before the AAO, the applicant asks the AAO to reconsider its prior decisions and to accept the new evidence that was submitted in conjunction with the first motion.

Counsel's submission 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). Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding. 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).

As evidence to support the first motion that counsel asks the AAO to now consider, the applicant submitted, among other items, affidavits from neighbors, his brother, and members of the Awami League to establish that he could not return to Bangladesh because of prior threats from and incidents involving the opposing political party. As previously stated, a motion to reopen must state the new facts that will be proven if the matter is reopened, and must be supported by affidavits or other documentary evidence. Generally, the new facts must be material and unavailable previously, and could not have been discovered earlier in the proceeding. Here, the evidence that comprised the first motion cannot be considered new; the affidavits and the other remaining evidence could have been made available to USCIS in support of the applicant's claim both at the time of the initial filing and

in all proceedings that occurred after the denial of the application. No information in the affidavits was new either. The AAO notes further that some of the information in the affidavits is not consistent with the applicant's own testimonial evidence. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. Accordingly, the applicant has not provided new facts for consideration and, therefore, the motion to reopen will be dismissed.

Although counsel indicated at Part 2 of the Form I-290B that he was filing a motion to reconsider, the AAO observes that counsel has not provided evidence that satisfies the requirements of a motion to reconsider. The record on motion does not include any pertinent precedent decisions that would establish that the AAO misinterpreted the evidence of record.

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 decisions of the AAO, dated August 20, 2008 and February 23, 2009, are affirmed. The application is denied.