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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**



A3

Date: **AUG 27 2012** Office: WASHINGTON DISTRICT FILE:

IN RE: Applicant

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:



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 \$630. 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,

Perry Rhew
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, and a subsequently filed motion. 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 Permanent Mission of Bangladesh to the United Nations in New York and that he had failed to present compelling reasons that prevent his return to the Bangladesh. As the applicant had not established that compelling reasons prevent his return to Bangladesh, the AAO did not address the issue of whether adjustment of status would be in the national interest of the United States.

On August 9, 2010, the AAO dismissed the applicant's motion to reopen or reconsider. In dismissing the motion, the AAO noted that the record on motion did not include any new facts and that the applicant's affidavit did 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).

In this motion, the applicant asserts, generally, that the "denial does not give any strong reasons and simply says that [he] did not provide any new facts." The applicant states that there "aren't any new facts, [his] daughters still have trouble with Bengali and [they] do not want to live in Bangladesh. After living in America for [so] long they are even bigger than girls in Bangladesh." The applicant contends that he has established that he performed diplomatic duties and that there are compelling why he cannot return to Bangladesh. The applicant asserts that his daughters are English speakers with a rudimentary command of Bengali, and that he would have difficulty finding suitable employment in Bangladesh.

The AAO has considered the difficulties that the applicant and his 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 *Permanent Mission of Bangladesh to the United Nations*. Accordingly, the applicant has not provided new facts for consideration and, thus, the motion to reopen will be dismissed.

The applicant 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 also 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.