U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: MAR 2 5 2014 Office: WASHINGTON DISTRICT OFFICE [redacted]

IN RE: [redacted]

APPLICATION: Application for Status as a Permanent Resident Pursuant to Section 13 of the Immigration and Nationality Act of 1957, Pub. L. No. 85-316, 71 Stat. 642, as amended.

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

for Ron M. Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. and a subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The applicant subsequently filed five motions to reopen and/or reconsider. The AAO dismissed the motions, left undisturbed its prior decisions, and affirmed the field office director's decision to deny the application. The matter is now before the AAO on a sixth motion to reopen and reconsider. The motion will be dismissed. The decisions of the director and the AAO will be affirmed. The application remains denied.

The applicant is a national of Ecuador 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)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(i).

The field office director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent his return to Ecuador. The field officer director also noted that the U.S. Department of State issued its opinion on April 4, 2008 recommending that the adjustment of status application of the applicant be denied because the applicant's reasons to remain in the United States are not compelling.

The applicant subsequently filed an appeal and five motions to reopen and/or reconsider. The AAO, upon a *de novo* review of the evidence of record determined in each case that the applicant failed to meet his burden of proof in establishing his eligibility for adjustment of status under Section 13 of the Act.[1] Specifically, the AAO determined that the applicant failed to establish that there are compelling reasons that prevent his and his family's return to Ecuador. Accordingly, the AAO dismissed the appeal and the motions. The last motion was dismissed on February 5, 2013.

On March 14, 2013, the applicant timely submits the current Form I-290B, Notice of Appeal or Motion requesting the AAO to reopen and reconsider its decision. On the Form I-290B, the applicant asserts that the current president of Ecuador has been a personal enemy of his family since 1993 and that the president intimidates his critics. The applicant fears that if he returns to Ecuador, he would be jailed by the president because of his family's opposition against him. The applicant submits a statement dated March 3, 2013, and copies of on-line newspaper articles on persecution of journalists in Ecuador and the re-election of President [redacted] for another term.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

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[1] The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

> 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In the March 3, 2013 statement, the applicant states that his sister and President [redacted] are political enemies and that he has been the target of the president's retaliatory treatment because of his relationship with his sister and his membership in his sister's political party, "[redacted]." The applicant states that he was arbitrarily dismissed from his position as [redacted] in San Francisco, California for political reasons. The applicant also states that he has been publically harassed by [redacted] friends in the Ecuadorian media, that his children were questioned and mocked at school, that his wife was denied a job in 2009 and in 2010, his wife was detained and questioned at the airport upon her arrival in Quito, Ecuador. The applicant further states that his retirement funds were frozen, his land expropriated by the Ecuadorian [redacted], and when he inquired why his land was expropriated, he was sued by the agency and an Order of preventive detention was issued against him in absentia. The applicant claims that when his wife was detained at the airport checkpoint and questioned, officers threatened her and asked her about his whereabouts. The officers told her that she should stay away because "she will see what happens if I come to Ecuador." The applicant indicates that under the circumstance, he cannot return to Ecuador because he believes that he would be wrongfully sentenced and jailed. The applicant states that based on the on-line newspaper articles he submitted on motion, he believes that the president will put him in jail because the president does not tolerate anybody speaking out against his government.

The AAO has considered the applicant's statement on motion and finds that the applicant has provided no new facts supported by affidavits or other documentary evidence as required for a motion to reopen. *See* 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 newly submitted, previously unavailable, and could not have been discovered or presented in the previous proceeding.[2] In addition, new facts have to be relevant and have probative value. On this current motion, the applicant has presented no new facts to be reopened; rather, the applicant reasserts the same set of facts presented in his prior submissions, which the AAO had fully considered and found to be insufficient evidence.

The AAO acknowledges the re-election of [redacted] in 2013 to serve another 4-year term. However, the applicant has provided no new facts or evidence to substantiate his claim that he and his family have been targeted by [redacted] and the reasons. The applicant's claims that he was arbitrary dismissed from his post in San Francisco in 1997 for political reasons, however, [redacted] was not elected to office until 2006. The applicant's claim that his wife was detained by the Ecuadorian Immigration, interrogated and threatened is not supported by the evidence in the record. Also, the record does not demonstrate that the alleged threat to the applicant

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[2] The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <*new* evidence> . . . ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

and his wife was due to his actions while serving as the in San Francisco, California, from November 1996 to June 1997.

The AAO has reviewed the on-line newspaper articles submitted by the applicant in support of the current motion. The March 3, 2013, has waged a war in the courts against what he called "a media dictatorship," and that press freedom and human-rights groups say that has created a climate of intimidation to quash criticism of his government. The August 31, 2012, article reports that a columnist from the main opposition newspaper in Ecuador who criticized was granted political asylum in the United States. These articles however, do not establish that the applicant, a returning diplomat, would be targeted by because of his actions as the of Ecuador in San Francisco, California. While the applicant states that he believes that President would jail him if he returns to Ecuador because the president does not tolerate anyone criticizing him or his government, the applicant, has provided no evidence that his criticism against the president that would incur the same treatment as journalists in Ecuador who have opposed the president and his government. The applicant does not demonstrate that he and his family will be at greater risk of harm because of his duties and responsibilities as of Ecuador in San Francisco, California. The information submitted by the applicant on motion does not reflect that the current government of Ecuador has precluded the applicant and his family from returning to Ecuador. Neither does the record substantiate that the applicant will be arrested or persecuted if he returns to Ecuador. As such, the applicant has failed to meet this key requirement of a motion to reopen.

The applicant, on motion, does not adequately address the issue of the compelling reasons that prevent his and his family's return to Ecuador. The applicant's general claim of harassment and intimidation by the President of Ecuador is not substantiated by the record. While the applicant submitted newspaper articles on the harsh treatment and intimidation of some journalists in Ecuador, the applicant does not provide any evidence demonstrating that he and his family would be targeted by the President of Ecuador if they return to Ecuador because of his duties and responsibilities as the of Ecuador in San Francisco, California. The applicant fails to establish that he and his family are at greater risk of harm because of his past government employment, political activities or other related reason.

The applicant provides no new facts or evidence to establish that he is unable to return to Ecuador because of any action or inaction on the part of the government of Ecuador or other political entities there. As such, the motion does not meet the requirements of 8 C.F.R. § 103.5(a)(2) and must be dismissed.

As for the motion to reconsider, the regulation requires that 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 (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. See *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano,* 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the "additional legal argument" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. Also, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Matter of O-S-G-,* 24 I&N Dec. 56, 58 (BIA 2006). Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60. Furthermore, a motion to reconsider is not a process by which a party may submit documents, which were previously available and the applicant failed to submit them when requested to do so.

In the instant matter, the applicant has provided no reasons for reconsideration that are supported by pertinent precedent decisions to establish that the AAO's prior decision was based on an incorrect application of law or USCIS policy. The applicant has also failed to provide pertinent precedent decisions or evidence to establish that the AAO's decision was incorrect based on the evidence of record at the time of the initial decision or established that the director or the AAO misinterpreted the evidence of record. The applicant has provided general and vague statements regarding veiled threats to him and his family without the pertinent evidence to support the claim. The applicant has failed to submit credible and probative evidence to support his assertions that he was arbitrarily dismissed from his position in San Francisco for no reason other than politics, and that the current president of Ecuador will arrest and jail him if he returns to Ecuador. The applicant has failed to provide evidence that he and his family would be harmed upon returning to Ecuador based on his prior employment with the government of Ecuador. The applicant does not adequately address the issue raised in the AAO's previous decisions, that he had not established compelling reasons as required under Section 13 of the Act that prevent his and his family's return to Ecuador. The AAO, in its previous decisions, has fully discussed the reasons why it found the applicant ineligible for adjustment of status under Section 13 of the Act. On motion, the applicant has not addressed whether the AAO's decision was incorrect as a matter of law, precedent decision or USCIS Service policy. Therefore the motion will be dismissed.

Furthermore, the motion shall be dismissed for failing to meet an applicable requirement. The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the submission constituting the motion does not contain a statement as to whether or not the unfavorable decision has been or is the subject of any judicial proceeding as required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Thus, the applicant failed to comply with this requirement for properly filing a motion. Accordingly, the motion must be dismissed for this reason also.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See 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.

The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion to reopen and motion to reconsider does not meet the applicable filing requirements, it must be dismissed.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden. Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.