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)

DATE: NOV 19 2014 Office: NATIONAL BENEFITS CENTER FILE:

IN RE: Applicant:

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:

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,

Ron M. Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, National Benefits Center, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motion will be denied. The previous decisions will be affirmed and the application remains denied.

The applicant is a native and citizen of Nigeria who is seeking to adjust her 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 director denied the application for adjustment of status after determining that the applicant had failed to demonstrate compelling reasons that prevent her return to Nigeria. The director also noted that the U.S. Department of State issued its opinion on January 5, 2013 advising that it could not make a favorable recommendation in this case as the applicant had not established compelling reasons that prevent her return to Nigeria. *See Director's Decision,* dated January 25, 2013.

On March 21, 2014, the AAO concurred with the determination of the director that the applicant had failed to establish compelling reasons within the requirements of Section 13 that prevent her and her family's return to Nigeria. The AAO dismissed the appeal accordingly.

On February 18, 2014, the applicant submits a Form I-290B, Notice of Appeal or Motion.[1] Counsel asserts that the decision to deny the application is "wrong and unduly prejudicial," and that the application was pending for 17 years. Counsel also asserts that the applicant had "a viable case for political asylum that was ignored." Counsel submits a brief, an "Appeal for Urgent Intervention" dated May 9, 2014 from the applicant, a New York Times online article dated May 13, 2014 about the recent kidnapping of young girls in Nigeria by Boko Haram, a terrorist group operating in certain parts of Nigeria, and copies of pictures, statements, articles and other documentation related to the applicant's charitable and humanitarian activities in Rwanda which had been previously submitted into the record in support of the motion. Counsel requests that the AAO reconsider its decision and/or in the alternative to allow the applicant to pursue a claim for political asylum.

On June 8, 2014, the applicant's new counsel submits a supplement to a brief submitted by the applicant's previous attorney, an on-line news article from Jerusalem Center for Public Affairs,

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[1] On the Form I-290B, counsel checked Box 2B, which states "I am filing an appeal," however, the accompanying brief states that "this brief is in support of the Appeal of the Decision to Deny/Motion to Reopen and Reconsider [the applicant's] application for adjustment of status under Section 13. . ." It is noted that the AAO does not exercise appellate jurisdiction over its own decisions. The AAO exercises appellate jurisdiction over only the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). See DHS Delegation Number 0150.1 (effective March 1, 2003). An appeal of an AAO appeal is not properly within the AAO's jurisdiction. However, because the applicant characterized her filing as a motion to reopen and a motion to reconsider on the accompanying brief from counsel, the form will be accepted as one despite the incorrect box being checked by counsel.

dated May 15, 2014 on Boko Haram and the Future of Nigeria and an on-line article from Premium Times on political corruption in Nigeria. Counsel claims that these articles provide the compelling reasons why the applicant cannot return to Nigeria because of the applicant's involvement with the education of young girls and the Boko Haram's targeting of educators of young girls like the applicant.

The AAO first turns to counsel's assertions on motion that it would be inhumane for the United States to deny the applicant's adjustment application which had been pending for 17 years and that it would be even more inhumane to deny the applicant the opportunity to continue her political asylum application in light of changed country conditions. The AAO acknowledges the length of time that elapsed before the adjudication of the applicant's adjustment of status application. However, counsel has failed to establish that the director made an incorrect decision because of the delay in processing the application. The AAO notes that the record contains a copy of a Form I-589, Application for Asylum and for Withholding of Deportation,[2] however, it does not appear from the record that the application was filed with an asylum office having jurisdiction over the applicant's residence, and there is no evidence in the record about the outcome of the asylum application. Notwithstanding, the AAO does not have primary or appellate jurisdiction over an asylum application. The jurisdiction of the Administrative Appeals Office is limited to that authority specifically granted to it by the Secretary of the Department of Homeland Security. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1(2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R . § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address the applicant's asylum application.

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:

> 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.

On motion, the applicant provides no new facts supported by affidavits or other documentary evidence as required for a motion to reopen. 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.[3] In addition, new facts

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[2] The Form I-589 in the record does not indicate the date when the application was completed and does not bear a receipt date from an asylum office indicating when the application was filed or received.

[3] 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

must be relevant and have probative value. In this matter, the applicant has presented no new facts to be reopened; rather, she reasserts essentially the same facts previously submitted in support of her application and on appeal. Also counsel cites the recent activities of the terrorist group Boko Haram as a compelling reason why the applicant cannot return to Nigeria. This assertion is not relevant to the applicant's duties as a former diplomat of Nigeria and any compelling reasons why she cannot return to Nigeria.

On motion, counsel submits a brief, statements from the applicant, news articles and other country condition information on Nigeria related to the general insecurity in the country and documents related to the applicant's charitable organization - and its humanitarian activities in Rwanda. The evidence on motion credibly establishes the applicant's humanitarian activities on behalf of the children of Rwanda but does not contain new facts or evidence on the applicant's request for adjustment of status under Section 13 of the Act, her duties and responsibilities at the Consulate General of Nigeria in New York, and the compelling reasons why she cannot return to Nigeria.

Pursuant to 8 C.F.R. § 245.3, eligibility for adjustment of status under Section 13 is limited to aliens who were admitted into the United States under section 101, paragraphs (a)(15)(A)(i), (a)(15)(A)(ii), (a)(15)(G)(i), or (a)(15)(G)(ii) of the Act who performed diplomatic or semi-diplomatic duties and to their immediate families, and who establish that there are compelling reasons why the applicant or the member of the applicant's immediate family are unable to return to the country represented by the government that accredited the applicant, and that adjustment of the applicant's status to that of an alien lawfully admitted to permanent residence would be in the national interest. Aliens whose duties were of a custodial, clerical, or menial nature, and members of their immediate families, are not eligible for benefits under Section 13.

The legislative history for Section 13 reveals that the provision was intended to provide adjustment of status for a "limited class of . . . worthy persons . . . left homeless and stateless" as a consequence of "Communist and other uprisings, aggression, or invasion" that have "in some cases . . . wiped out" their governments. Statement of Senator John F. Kennedy, *Analysis of Bill to Amend the Immigration and Nationality Act*, 85th Cong., 103 Cong. Rec. 14660 (August 14, 1957). The phrase "compelling reasons" was added to Section 13 in 1981 after Congress "considered 74 such cases and rejected all but 4 of them for failure to satisfy the criteria clearly established by the legislative history of the 1957 law." H. R. Rep. 97-264 at 33 (October 2, 1981).

As discussed above, the legislative history of Section 13 shows that Congress intended that "compelling reasons" relate to political changes that render diplomats and foreign representatives "stateless or homeless" or at risk of harm following political upheavals in the country represented by the government which accredited them. Section 13 requires that an applicant for adjustment of status under this provision have "compelling reasons demonstrating that the alien is *unable* to return to the country represented by the government which accredited the applicant." (Emphasis added). The term "compelling" must be read in conjunction with the term "unable" to correctly interpret the meaning of the words in context. Thus, reasons that are compelling are those that render the applicant unable to return, rather than those that merely make return undesirable or not preferred

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(1984)(emphasis in original) .

from the applicant's perspective. The general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. As such, the record does not meet the requirements of a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2). The record does not meet the requirements for a motion to reconsider.

The regulation at 8 C.F.R. § 103.5(a)(3) stipulates 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. 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. Although the applicant submitted ample documentation on motion relating to her charitable and humanitarian activities in Rwanda and the United States through [redacted] she has failed to provide credible and probative evidence to establish that she and her family are at greater risk of harm if she returns to Nigeria because of her activities and duties as a former diplomat for the Nigerian government in the United States during the period 1992 to 1995. The evidence does not adequately address the issue raised in the AAO's previous decision, that the applicant had not established compelling reasons that prevent her and her family's return to Nigeria. The applicant submitted an on-line news article about the recent abduction of Nigerian girls by the terrorist group Boko Haram from a Northern Nigerian Girls High School, however, this evidence is not probative to the compelling reasons that preclude the applicant from returning to Nigeria as required for adjustment of status under Section 13 of the Act.

Country condition information on Nigeria shows that the authoritarian regime of Sani Abacha that controlled Nigeria when the applicant served as a [redacted] for the Consulate

General of Nigeria in , New York from March 1992 to April 1995, ceased to exist with the death of Abacha June 8, 1998, and that there has been successive democratically elected governments in Nigeria since then. The applicant has failed to demonstrate that the current government of Nigeria will not allow her return to that country, or that her past employment as a places her and her family in danger and renders them unable to return to Nigeria. The AAO recognizes that the applicant and her family have made contributions to American society and the world through her charitable and humanitarian organization. However, the applicant has failed to demonstrate that she or any member of her immediate family have compelling reasons as contemplated under Section 13 that prevent them from returning to Nigeria. On motion, the applicant has failed to submit sufficient credible and probative evidence to overcome the grounds of the AAO's prior decision on March 12, 2014. Therefore the motion will be denied

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 denied, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is denied