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U.S. Citizenship  
and Immigration  
Services

[Redacted]

A3

FILE: [Redacted] Office: WASHINGTON DISTRICT Date:

**MAR 12 2009**

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, as required by 8 C.F.R. 103.5(a)(1)(i).

  
John F. Grissom, Acting 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 subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

The applicant is a native and citizen of Zaire (now Democratic Republic of Congo ("Congo")) 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)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

The field office director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that she performed diplomatic or semi-diplomatic duties, that compelling reasons prevent her return to the Congo, or that her adjustment would be in the national interest. The AAO affirmed the field office director's determination that the applicant failed to establish that compelling reasons prevent her return to the Congo or that her adjustment would be in the national interest.

On motion, counsel for the applicant asserts that the applicant will face discrimination in the Congo, not only because of her gender but also because of her age and her physical limitations. Counsel also asserts that the applicant currently works as a certified nursing assistant and the demand for qualified nursing professionals far exceeds the supply in the United States. Counsel submits the applicant's affidavit dated November 18, 2008, wherein the applicant declares: that she cannot go back to the Congo; that she is a person of interest due to her prior duties performed for the government of Zaire; and that many people who worked with her are dead. Counsel also submits excerpts from various sources on the history and general country conditions in the Congo.

Counsel's submission of additional evidence 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).

On motion, counsel submits evidence previously submitted and other evidence previously available but not presented in the previous proceeding. The applicant's affidavit, although a sworn statement, does not include documentary evidence substantiating her claims. The record does not include any independent evidence substantiating the applicant's claim that she is a person of interest to the current government of the Congo based on her work as an Administrative Secretary for the Permanent Mission of Zaire to the United Nations in New York from February 27, 1986 to October 1993. Nor does the record include evidence that many of the people who worked with her are now dead and substantiate the

reason or cause for their deaths. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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, no evidence in the motion contains new facts that were previously unavailable and no documentary evidence substantiating the applicant's claims. Accordingly, the applicant has not provided new facts for consideration thus the motion to reopen will be dismissed.

Of note, 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.

Although counsel does not request that the motion be considered a motion to reconsider, the AAO also 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 decision of the AAO, dated October 31, 2008, is affirmed. The application is denied.