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U.S. Citizenship  
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Services

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FILE:

Office: WASHINGTON DISTRICT

Date:

**MAR 12 2009**

IN RE:

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:

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. The matter is now before the Administration Appeals Office (AAO) on appeal. The appeal will be summarily dismissed. The application will be denied.

The applicant is a native and citizen 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 not established that compelling reasons prevent his return to Ecuador.

Section 13 of the Act of September 11, 1957, as amended on December 29, 1981, by Pub. L. 97-116, 95 Stat. 1161, provides, in pertinent part:

(a) Any alien admitted to the United States as a nonimmigrant under the provisions of either section 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Act, who has failed to maintain a status under any of those provisions, may apply to the Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.

Title 8 Code of Federal Regulations Part 245.3 states in pertinent part:

Any application for benefits under section 13 of the Act of September 11, 1957, as amended, must be filed on Form I - 485 with the director having jurisdiction over the applicant's place of residence. The benefits under section 13 are 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 Immigration and Nationality 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 is unable to return to the country represented by the government which accredited the applicant and that adjustment of the applicant's status to that of an alien lawfully admitted for permanent residence would be in the national interest. 8 U.S.C. § 1255b(b).

Counsel for the applicant timely submitted a Form I-290B indicating that a brief and/or additional evidence would be submitted in 30 days. On the Form I-290B, counsel asserts that the applicant is a personal enemy of the current president of Ecuador and that the current president has publicly denounced the applicant and caused him many difficulties. Counsel contends that it would be very dangerous for the applicant if forced to return to Ecuador.

On February 17, 2009, the AAO requested that counsel of record indicate whether she had submitted a brief or evidence. The AAO clearly stated that the facsimile is not and should not be construed as

requesting or permitting the applicant or counsel to submit a late brief and/or evidence in response to the request. In a February 19, 2009 response, counsel submitted her cover letter a statement from the applicant's sister, and country condition information. Counsel did not submit any evidence that she had previously and timely submitted this information in support of the appeal. As the record does not include evidence that counsel submitted her letter or additional information timely, the information will not be considered a part of the record. Given the absence of a brief or additional evidence which may be considered by the AAO, the record does not include evidence substantiating that the applicant is a personal enemy of the current president of Ecuador or that the applicant has compelling reasons preventing his return to Ecuador. The AAO finds that the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, and the appeal must be summarily dismissed for that reason.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

Upon review of the record, the record does not contain evidence in support of the appeal sufficient to substantiate counsel's assertions on appeal. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The record on appeal does not identify specifically any erroneous conclusions of law or statements of fact made by the field office director as a basis for the appeal. The AAO is without further evidence or argument to evaluate regarding the applicant's failure to establish essential elements of eligibility for this benefit. Counsel and the applicant's failure to specifically address the field office director's findings and timely present evidence and argument identifying any perceived erroneous conclusions of law or statements of fact mandate the summary dismissal of the appeal.

Inasmuch as the applicant has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

The application will be denied for the stated reason set out in the field office director's decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is summarily dismissed. The application is denied.