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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

A<sub>3</sub>

FILE:

Office: WASHINGTON DISTRICT

Date:

APR 22 2010

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).

A handwritten signature in black ink, appearing to read "Perry Rhew".

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. 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)(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 compelling reasons prevent his return to Bangladesh. The AAO affirmed the field office director's determination.

On motion, counsel for the applicant "strongly disagrees" with the AAO's decision and reiterates the applicant's firm belief that there are compelling reasons that prevent his return to Bangladesh. Counsel submits the applicant's statement, the Country Report on Human Rights Practices for Bangladesh, dated February 25, 2009, and recent newspaper articles on Bangladesh. Counsel contends that the information submitted on motion establishes that Bangladesh is a country in severe crisis, that basic law and order has broken down, and that the filing of politically or financially motivated false charges is common. The applicant, in the February 27, 2009 statement submitted on motion, reiterates that he and his family have suffered the last six months due to illegal and false proceedings filed in Bangladesh by his cousins over property. The applicant also notes that his younger brother who had been living on the property had been forced to leave and that he does not have any other house to live in and will face a similar situation as has been faced by his brother.

The information submitted on motion 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).

The AAO considered the private dispute between the applicant and his cousins in its February 20, 2009 decision. The applicant's letter on motion does not include further testimonial or documentary evidence that establishes that the applicant will face a greater risk of harm because of his past government employment, political activities, or other related reasons. There is no evidence of a specific threat against the applicant or his family showing that he would be subject to persecution because of the civil actions taken by his cousins over disputed property. The AAO has also considered the country conditions in Bangladesh and the political turmoil as detailed in the articles presented on motion.

However, there is nothing in the articles or in the country conditions report on Bangladesh that shows that the applicant or others like him would be subjected to threats or would be at greater risk of harm from the Bangladeshi government due to any political changes in Bangladesh that render diplomats and foreign representatives “stateless or homeless” or at risk of harm because of any political activities. Again, the evidence of record does not present new evidence that establishes that the applicant’s work for the Bangladeshi government somehow precludes the applicant from returning to Bangladesh because of any action or inaction on the part of the government of Bangladesh or other political entity there as required under Section 13.

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 pertinent to the applicant’s particular situation. Accordingly, 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.

The AAO also finds that the applicant 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 or the field office director 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 February 20, 2009, is affirmed. The application is denied.