

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

A3

[REDACTED]

FILE: [REDACTED] Office: WASHINGTON DISTRICT

Date:

APR 22 2010

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).

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 subsequent 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 the Philippines 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 duties of a diplomatic or semi-diplomatic nature, that compelling reasons prevent her return to the Philippines, and that her adjustment of status would be in the interest of the United States. The AAO affirmed the field office director's determination that the applicant failed to establish that compelling reasons prevent her return to the Philippines or that her adjustment would be in the national interest.

On motion the applicant asserts that leaving the United States will cause hardships to her two minor sons and that she and her family face "real threats from the New People's Army, a leftist group of the Communist Party of the Philippines." The applicant attaches a death certificate for her brother that shows he died as a result of gunshot wounds.

The applicant's submission of her brother-in-law's death certificate 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 death of the applicant's brother-in-law and found that the police reports the applicant provided did not identify the suspect in the death and that there was no information in the record that substantiated the applicant's speculation that her brother-in-law was killed as a means to threaten her family. The applicant's letter on motion and the death certificate submitted do not include further testimonial or documentary evidence that substantiates her claims. Again, the record on motion does not include any independent evidence substantiating the applicant's claim that she is a person of interest to the current government of the Philippines or would be targeted by the New People's Army or any other group because of her work as a Consular Assistant to the Consulate General of the Philippines in New York. The AAO notes that the difficulty that the applicant's children may face in adjusting to a new environment in the Philippines is not a compelling reason 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 that were previously unavailable and further there is no documentary evidence substantiating the applicant's claims. Accordingly, the applicant has not provided new facts for consideration and, 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.

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.