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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

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FILE: [REDACTED] Office: WASHINGTON DISTRICT

Date:

JAN 05 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:

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 or reopen, 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 appealed to the Administrative Appeals Office (AAO). The AAO dismissed the appeal and rejected a subsequent motion to reopen or reconsider because it was not timely filed. The matter is again before the AAO on a motion to reopen and reconsider. The motion will be dismissed and the previous decision to deny the petition will be affirmed.

The applicant is a native and citizen of Bangladesh 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 admitted under section 101(a)(15)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i), and the spouse of a principal alien admitted under section 101(a)(15)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i), who performed diplomatic or semi-diplomatic duties.

The field office director denied the Application to Register Permanent Residence or Adjust Status (Form I-485) of the applicant's spouse after determining that the applicant's spouse had failed to demonstrate that he performed diplomatic or semi-diplomatic duties, that compelling reasons prevented his and his family's return to Bangladesh, or that adjustment was in the national interest. The field office director denied the applicant's adjustment application on the basis of her spouse's ineligibility for benefits under Section 13. Counsel appealed both decisions, and the AAO withdrew the director's determination that the applicant's spouse did not perform diplomatic or semi-diplomatic duties, but affirmed the denial of the applicant's spouse's application on the bases that there were no compelling reasons preventing the applicant's return and that the applicant's spouse's adjustment would not be in the national interest. The AAO also dismissed the applicant's appeal based upon her spouse's ineligibility. The applicant and her spouse, through counsel, each filed a motion for the AAO to consider new evidence, which the AAO rejected as untimely filed. In this second motion that is currently before the AAO, the applicant asks the AAO to reconsider its prior decisions and to accept the new evidence that was submitted in conjunction with the first motion.

In a separate decision, the AAO has dismissed the motion of the applicant's spouse on the ground that the evidence did not meet requirements of a motion to reopen or a motion to reconsider. As the applicant's eligibility for adjustment under Section 13 derives from the eligibility of her spouse, and the applicant has not asserted any compelling reasons other than those claimed by her spouse, the applicant is therefore also ineligible for adjustment of status.

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 decisions of the AAO, dated August 20, 2008 and February 23, 2009, are affirmed. The application is denied.