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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:

Office: WASHINGTON DISTRICT

Date:

MAR 09 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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. and a subsequently filed appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a 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)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

The field office director denied the application for adjustment of status after determining: that the applicant had not established that he performed diplomatic or semi-diplomatic duties; that the applicant had failed to demonstrate that compelling reasons prevent his return to Bangladesh; and that his adjustment of status would be in the national interest of the United States. The field office director also noted that the Department of State issued its opinion on February 26, 2008 advising of its recommendation that the applicant's request to change status be denied. *Decision of Field Office Director*, dated March 14, 2008. The AAO affirmed the field office director's determination that the applicant failed to establish that he performed diplomatic or semi-diplomatic duties and that he had failed to establish that compelling reasons prevent his return to Bangladesh. As the AAO affirmed the field office director's decision on these two issues, the AAO did not reach the issue of whether the applicant's adjustment of status would be in the national interest of the United States. In the AAO's February 24, 2009 decision, when determining whether the applicant had established his duties as diplomatic or semi-diplomatic, the AAO noted counsel's reference to an attached "office order" dated February 22, 2000. Upon review of the record, the AAO determined that the "office order" document had not been included in the record.

On motion, counsel for the applicant asserts that the AAO decision did not mention the "office order," attaches a copy of the "office order," and contends that the applicant's duties listed on the document establish that his duties are more important than clerical duties because the applicant was involved in communication with missions from other nations. Counsel also attaches two articles regarding mutiny by Bangladeshi troops.

The AAO does not consider the "office order" document new evidence. 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. As this document was available but was not presented it is not a "new" document. Furthermore, the "office order" document does not include new facts, but rather confirms that the applicant's duties were clerical duties. The "office order" lists the applicant's duties as:

- Work of the Permanent Representative
- Maintenance of files related to concurrent accreditation

- Checking and distributing incoming fax messages and putting up all outgoing messages to PR
- National day messages to Permanent Missions and other miscellaneous correspondences from PR
- Acknowledgment of arrival/departure of PRs to the UN

These duties are not sufficiently described to demonstrate that they are more than clerical in nature. Thus, even if the “office order” had been included in the original submission, the document would not have assisted in establishing the applicant’s duties as semi-diplomatic or diplomatic. Counsel’s assertion that the applicant’s involvement in communication with other missions establishes that the applicant’s duties were semi-diplomatic is not persuasive. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); 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 does not demonstrate that the applicant’s tasks involved more than typing, sending, and filing the documentation prepared by the Bangladeshi permanent representative. The AAO has reviewed the two articles also submitted by counsel on motion and finds that the articles are not relevant to the applicant and do not demonstrate that the applicant will be targeted by the Bangladeshi government thereby compellingly preventing his return to Bangladesh.

Counsel’s assertions, the “office order” document, and the articles regarding a mutiny by Bangladeshi troops submitted on motion do not satisfy the requirements of a motion to reopen. The AAO has already considered the applicant’s duties and the “office order” document is not only not “new” evidence but it also does not demonstrate that the applicant’s duties were semi-diplomatic or diplomatic in nature. The articles submitted are not relevant to the applicant. Although the articles show that the government in Bangladesh continues to face political challenges, the articles provide no new information that would prevent the applicant’s return to Bangladesh. The record on motion does not include any new relevant facts.

Neither do counsel’s assertions satisfy the requirements of a motion to reconsider. 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). Counsel fails to provide pertinent precedent decisions or evidence that establish that the decision was incorrect based on the evidence of record at the time of the initial decision. Counsel, other than providing articles that are not relevant to the applicant or the applicant’s circumstances, does not even address the applicant’s failure to establish that he is unable to return to Bangladesh because of any action or inaction on the part of the Bangladeshi government or other political entity as required under section 13.

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.

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 24, 2009, is affirmed. The application is denied.