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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: **MAR 09 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, 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 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 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 the spouse of 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 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 prevent his return to Bangladesh; and that his adjustment would be in the national interest of the United States. The field office director denied the applicant's adjustment application on the basis of her spouse's ineligibility for benefits under Section 13. The AAO affirmed the field office director's decision that the applicant's spouse had not established that he performed semi-diplomatic or diplomatic duties and that he had not established that compelling reasons prevented his return to Bangladesh. The AAO did not reach the issue regarding whether the applicant's spouse's adjustment of status would be in the national interest of the United States.

In a separate decision, the AAO dismissed the motion of the applicant's spouse affirming its previous February 24, 2009 decision. As the applicant's eligibility for adjustment under Section 13 derives from the eligibility of her spouse, and the applicant has not provided new facts or pertinent precedent decisions separate from those claimed by her spouse, the applicant's motion to reopen and reconsider is also dismissed.

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.