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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 the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The applicant filed a motion to reopen the matter and upon review, the AAO dismissed the motion to reopen or reconsider. The applicant has now filed a second motion to reopen and reconsider the previous decision. The motion will be dismissed.

The applicant is a native and citizen of Zaire (now Democratic Republic of Congo (“Congo”)) who is seeking to adjust her status to that of a 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 diplomatic or semi-diplomatic duties, that compelling reasons prevent her return to the Congo, or that her adjustment would be in the national interest. The AAO affirmed the field office director’s determination that the applicant failed to establish that compelling reasons prevent her return to the Congo or that her adjustment would be in the national interest.

On the first motion, counsel for the applicant asserted that the applicant will face discrimination in the Congo, not only because of her gender but also because of her age and her physical limitations. Counsel also asserted that the applicant works as a certified nursing assistant and the demand for qualified nursing professionals far exceeds the supply in the United States. Counsel submitted the applicant’s affidavit dated November 18, 2008, wherein the applicant declared: that she cannot go back to the Congo; that she is a person of interest due to her prior duties performed for the government of Zaire; and that many people who worked with her are dead. Counsel also submitted excerpts from various sources on the history and general country conditions in the Congo. The AAO determined that the applicant, although providing a sworn statement, did not submit documentary evidence substantiating her claims. Upon review of the record, the AAO found that there was no probative evidence substantiating the applicant’s claim that she is a person of interest to the current government of the Congo based on her work as an Administrative Secretary for the Permanent Mission of Zaire to the United Nations in New York from February 27, 1986 to October 1993. Similarly, the AAO noted that the record did not include evidence that many of the people who worked with her are now dead, nor did the applicant substantiate the reason or cause of their deaths.

On the second and instant motion, the applicant submits previously provided information as well as additional articles on the country conditions in the Congo. The applicant also submits her affidavit notarized on April 7, 2009 wherein she declares: because of her, the rebels of Kabila maltreated her family by throwing her brother out of his house and raping his daughter who bore a child before she died which the applicant subsequently adopted; and that she lost her two immediate authorities, the [REDACTED] whose body was taken back to the Congo for burial and [REDACTED] who was buried in New Jersey. The AAO observes that with each subsequent affidavit, the applicant adds information not previously presented. The AAO finds that the applicant’s escalation of events in each of her affidavits subsequent to the initial affidavit amounts to inconsistent testimony on the part of the applicant, which undermines the credibility of her testimony. Doubt cast on any aspect of the applicant’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter*

of Ho, 19 I&N Dec. 582, 591 (BIA 1988). In addition, the AAO finds that the applicant provides no details or independent information regarding her claim that her brother and his daughter suffered because of the applicant's position in the United States as an Administrative Secretary for the Permanent Mission of Zaire to the United Nations from February 27, 1986 to October 1993. Further, the applicant although now naming her two immediate supervisors while she was an administrative secretary and noting that they are deceased implies that they died while in the United States and not due to any action or inaction of the current Congo government. The applicant again has failed to provide any new independent evidence substantiating that she would be a target of the current Congo government or that she would be unable to return to the Congo. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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).

Here, no evidence in the motion contains new facts that were previously unavailable. Likewise, the applicant has not presented new documentary evidence substantiating her claims. The AAO has taken notice of the dire and abhorrent conditions in the Congo; however such conditions, in and of themselves, do not provide a basis for relief pursuant to the requirements of section 13. The applicant in this matter has not provided new facts for consideration that demonstrate that she is at greater risk of harm because of her past government employment, political activities or other related reasons. Accordingly, the motion to reopen will be dismissed. The AAO also finds that the record on motion does not include any pertinent precedent decisions that would establish that the AAO misinterpreted the evidence of record, thus any motion to reconsider must also 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.

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 are affirmed. The application is denied.