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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 15 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:

SELF-REPRESENTED

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 Administration Appeals Office (AAO) dismissed a subsequently filed appeal. 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 Pakistan who is seeking to adjust his 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 compelling reasons prevent his return to Pakistan. The field office director also noted that the Department of State issued its opinion on August 28, 2008 advising that it could not favorably recommend the matter as the reasons for remaining in the United States are not compelling. On appeal, the applicant stated that he did not want to return to Pakistan as he wanted to continue his education in the United States. The applicant also noted that the conditions in Pakistan were deteriorating and that many tragic incidents involving loss of life and property had been widely reported. The AAO dismissed the appeal finding that the applicant did not satisfy the eligibility requirements for section 13. The AAO determined that the applicant had not established compelling reasons preventing his return to Pakistan and had not established that he had performed duties of a diplomatic or semi-diplomatic nature in his position with the Embassy of Pakistan.

On motion, the applicant states that his section 13 application is limited to stay to study in the United States and then to leave the United States and is not an application to register permanent residence. The applicant requests that he be allowed to stay to study and to be issued work authorization.

The applicant's letter does not satisfy either the requirements of a motion to reopen or a motion to reconsider. The applicant's letter on motion inherently acknowledges that his return to Pakistan is not prevented by compelling reasons. 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 observes that the applicant in this matter mistakenly believes that a Form I-485, Application to Register Permanent Residence or Adjust Status, pursuant to section 13 may be used to request a stay to continue studying and working in the United States, without meeting the basic criteria set forth for eligibility under section 13. It may not be used in such a fashion. The record in this matter does not include any new facts that were previously unavailable and thus the applicant has not satisfied the

requirements for a motion to reopen. The record also fails to provide legitimate reasons for reconsideration that are supported by pertinent precedent decisions and establish that the AAO's decision was based on an incorrect application of law or USCIS policy.

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 11, 2009, is affirmed. The application is denied.