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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: **SEP 13 2010**

IN RE: Applicant: [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:

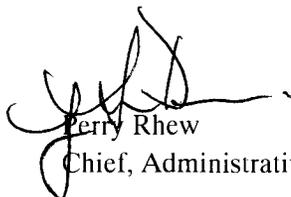
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. The Administrative Appeals Office (AAO) summarily dismissed the subsequently filed appeal. The AAO granted two subsequently filed motions to reopen and reconsider. The AAO affirmed the field office director's decision denying the application on June 11, 2009 and affirmed the field office director's decision and its decision on April 22, 2010. The matter is now before the AAO on a third motion to reopen and reconsider. The motion will be granted and the application will be denied.

The applicant is a national of Ecuador 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)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(i).

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 Ecuador and had failed to establish why his adjustment of status would be in the national interest of the United States. In a June 11, 2009 decision, the AAO granted the applicant's motion to reopen the matter, considered the evidence submitted, and affirmed its decision to deny the application.

On second motion, counsel for the applicant submitted a statement from the applicant's wife and other information in support of the wife's statement, to demonstrate that the applicant's family has been specifically targeted for reprisals by the current government of Ecuador. Counsel asserted that the family is definitely at risk if forced to return to Ecuador. Upon review of the evidence submitted, the AAO determined that the current government of Ecuador had not precluded the applicant or his wife from returning to Ecuador and moreover that the record did not reflect that the democratically changed government in Ecuador had precluded the applicant's return based on the applicant's actions while Consul General of Ecuador in San Francisco, California, from November 1996 to June 10, 1997 or any political actions on his part since that time. The AAO determined that the applicant had not demonstrated that compelling reasons prevent his return to Ecuador.

On third motion, counsel for the applicant submits a May 20, 2010 letter from the applicant's wife, an undated statement signed by the applicant, and evidence that land owned by the applicant in Ecuador had been seized by the Ecuadoran government as unused land and transferred to an indigenous community. In the applicant's wife's letter, she states that she returned to Ecuador in January 2010 to visit her ill father and was interrogated by officials when she first entered Ecuador regarding her political involvement and her relationship with her sister-in-law who had opposed the election of the current president. She also indicated that she traveled with her father to Colombia for his heart surgery and she returned to Ecuador after her father had died and that she was detained at immigration once again upon her return to Ecuador. At that time she was asked about her husband and why he did not return to Ecuador. The applicant's wife indicated that the officials told her that her husband should be afraid. The applicant's wife also notes that she filed a complaint against INDA, the Ecuadorian Office of Agrarian Reform, which expropriated land that the applicant had inherited from his grandmother. She notes that she has not received an answer from INDA regarding the complaint but noted that the land was already being used by the indigenous community. The applicant's wife states that upon her

departure from Ecuador she was held for over an hour by Ecuadorian immigration and she was told that she was being detained because her sister-in-law had sided with the opposition to the current [REDACTED] of Ecuador. She indicates further that the immigration officials made threats against her husband and told her that [REDACTED] "won't forgive and forget."

In the applicant's letter in support of this third motion, the applicant notes the land that he had inherited had been expropriated by the Ecuadorian government and transferred to the indigenous community. The applicant notes that he had been using the land to raise cattle but the land was taken because the Ecuadorian officials said that it was unused. The record on motion includes documentation showing that the land had been evaluated, assigned a value, and was now held by the National Institute for Agriculture and reimbursement to the applicant for the assessed value of the land was available at the Central Bank. The applicant again references his wife's denial of a consultancy position the previous year. The applicant notes that he does not have any economical means to return to Ecuador and because of his situation with the current president, the high unemployment rate, and his age, he would not be able to find work in Ecuador. The applicant reiterates his concern that [REDACTED] continues to "instigate" his sister and will not let her do business in Ecuador, and that [REDACTED] has publically declared that he "won't forget" and that [REDACTED] will not stop his harassment towards him and his family.

The AAO has reviewed the applicant's wife's statement and the applicant's statement. The applicant's wife, although indicating that she was detained by Ecuadorian immigration officials upon her entry and exit of Ecuador, provides general and vague statements regarding veiled threats. It is not possible to conclude from the applicant's wife's statement that she or her husband was directly threatened because of her husband's actions while Consul General of Ecuador in San Francisco, California from November 1996 to June 10, 1997 or any political actions on the applicant's part since that time. The AAO again observes that the applicant's wife, her husband, and his sister have traveled to Ecuador in the past. The AAO notes that [REDACTED] was recently re-elected in an election deemed fair by outside observers. The AAO finds no evidence to substantiate the applicant's wife's claim that her husband was indirectly threatened if he returned to Ecuador.

The AAO observes that in the applicant's statement he claims that he would have difficulty finding work because of the poor economic conditions, his age, and his "situation" with [REDACTED]. However, the applicant does not provide evidence that his situation with [REDACTED] has further deteriorated and if so why his situation has deteriorated with the passage of time. Although the applicant references his wife's denial of a position in the Ecuadorian government the previous year, the AAO found in its April 22, 2010 decision, that there was not anything in the record that substantiated the applicant's wife's speculation that her position was cancelled or suspended because of the actions of her sister-in-law. The AAO observed that the letter informing the applicant's wife that the offered position had been suspended indicated that she would be contacted if the funds became available in the future. Similarly, the taking of the applicant's land by the Ecuadorian government was accomplished through Ecuador's laws. Although the applicant may disagree with the Ecuadorian government's law allowing it to appropriate unused land, the AAO does not find evidence that the land was taken because of the applicant's opposition to [REDACTED] but rather because it was found to be unused. There is nothing in the record that substantiates the applicant's claim that he continued to use the land to raise

cattle or that such a use was permissible. Regarding the applicant's job opportunities in Ecuador, the AAO again finds that even if the applicant or his wife may have difficulty obtaining a job commensurate with their education, experience, and desire to work for the Ecuadorian government, hardship in finding work or in adapting to a different country does not demonstrate compellingly that either the applicant or his family is unable to return to Ecuador. More importantly, the information submitted on motion does not reflect that the current government of Ecuador has precluded the applicant or his wife from returning to Ecuador. The AAO does not find the veiled threats allegedly uttered by Ecuadorian immigration officials substantiated in the record or by current country conditions.

The eligibility for relief pursuant to Section 13 is limited and ineligibility for section 13 relief does not preclude the applicant from pursuing other benefits provided under the immigration laws of the United States. In this matter the information submitted on motion does not include further testimonial or documentary evidence that establishes that the applicant will face a greater risk of harm because of his past government employment or political activities. There is no substantive evidence of a specific threat against the applicant or his family. There is insufficient information demonstrating that the applicant would be subjected to threats or would be at greater risk of harm from the Ecuadorian government due to political changes in Ecuador that render diplomats and foreign representatives "stateless or homeless" or at risk of harm following political upheavals in the country represented by the government which accredited them. The information submitted on motion does not establish that the applicant is precluded from returning to Ecuador because of any action or inaction on the part of the government of Ecuador or that he or his family would be subjected to harm as required under Section 13. Accordingly, the AAO's previous decisions remain undisturbed.

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 previous decisions of the AAO, dated June 11, 2009 and April 22, 2010, are affirmed. The application is denied.