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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

A3

[Redacted]

DATE: FEB 08 2012

Office: WASHINGTON DISTRICT OFFICE

File [Redacted]

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 PETITIONER:

[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 \$630. 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. and a subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The AAO granted three subsequently filed motions to reopen and reconsider. The AAO affirmed the field office director's decision and its subsequent decisions in the September 13, 2010 decision on the applicant's motion. The matter is now before the AAO on a fourth motion to reopen and reconsider. The motion to reopen will be granted, the motion to reconsider will be dismissed, and the application will remain 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 regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." The applicant submitted his October 10, 2010 statement indicating he had attempted to withdraw his retirement funds from an Ecuadoran bank and his father had sent him a letter from the bank notifying him that access to his funds had been blocked. The applicant provides a translated copy of his request to withdraw funds and a July 15, 2010 letter addressed to him stating that his funds had been blocked by a high ranking authority. The applicant also notes his disagreement with the AAO's prior decisions. Counsel for the applicant asserts that the situation in Ecuador is tenuous at best and that preventing the applicant from accessing his retirement funds shows he has been blacklisted and the government is seeking to punish him for his views opposing the current president and that it is "a clear indication" of the government's attempt to prevent the applicant from returning to Ecuador.

The applicant does not submit evidence or argument as a basis for a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The applicant does not submit any pertinent precedent decisions to establish that the AAO's prior decisions were based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy based on the evidence of record at the time of the initial decision. The applicant fails to establish that the decision was an incorrect application of the law by pertinent precedent decisions, or establish that the director or the AAO misinterpreted the evidence of record. The evidence fails to satisfy the requirements of a motion to reconsider. The motion to reconsider is dismissed.

The applicant's statement on appeal and the translated letter indicating that the applicant's retirement funds had been blocked have been reviewed. Although these documents indicate that the applicant's access to the funds may have been blocked, the record does not establish why. Counsel's assertion that blocking the funds shows that the applicant has been blacklisted and is "a clear indication" that the Ecuadoran government is preventing the applicant from returning to Ecuador is unfounded. There are a myriad number of reasons the applicant's funds may have been blocked. Without probative evidence of the reasons, the applicant and counsel's suppositions are speculative. The record on motion does not reflect that the democratically changed government in Ecuador has 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 applicant has not demonstrated that compelling reasons prevent his return to Ecuador.

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, April 22, 2010, and September 13, 2010 are affirmed. The application remains denied.