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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

[Redacted]

DATE: Office: WASHINGTON DISTRICT OFFICE File: [Redacted]

FEB 05 2013

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron M. Rosenberg
Acting 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 four subsequently filed motions to reopen and reconsider. The AAO affirmed the field office director's decision and its subsequent decisions in the February 8, 2012 decision on the applicant's motion. The matter is now before the AAO on a fifth 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 a March 5, 2012 statement indicating that he wrote an open letter to INDA, the Ecuadorian Office of Agrarian Reform criticizing them of wrongfully expropriating his land. The applicant claims that as a result of the criticism, a "Libel Claim" was issued against him and the Provisional Court issued an "Order of Preventive Detention" to have him arrested and detained because he did not appear in court as ordered despite the fact that he informed the court that he was outside the country and would not be able to appear as ordered. The applicant also claims that he cannot go back to Ecuador because he fears that President Correa will put him in jail or make him pay a fine because he publicly criticized one of President Correa's agencies. The applicant stated that President Correa has kept in place a policy against free speech, and that the president has gone after individuals who have criticized him. The applicant further stated that he does not have the economic means to hire a lawyer in Ecuador to defend him and therefore does not consider it safe for him to return to Ecuador at this time.

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.

In support of the current motion, the applicant submitted letters and personal statements relating to his alleged criticism of the government for expropriating his land, court documents relating to libel charges against him, the notice to appear in court and the "Order of Preventive Imprisonment for Libel" for his apprehension and detention. The applicant also submitted on-line newspaper articles unrelated to his public criticism against INDA. The documents submitted on motion have been reviewed. However, the documentation does not establish that the applicant would be targeted by the government of Ecuador because of the applicant's activities as Consul General of Ecuador in [REDACTED] during the period 1996 to 1997. The purpose of Section 13 is to offer protection to those individuals who are unable to return to the State that accredited them due to changes in that State government and because they would be targeted for their past specific role in working for that state. Here, the information submitted by the applicant on motion does not reflect that the government in Ecuador has precluded the applicant's return based on the applicant's actions while Consul General of Ecuador in [REDACTED] from November 1996 to June 10, 1997 or any political actions on his part since that time. The applicant has provided no evidence to substantiate his claim that he "criticized" the government and that he is at greater risk of harm based on that action. Therefore, 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, September 13, 2010, and February 8, 2012 are affirmed. The application remains denied.