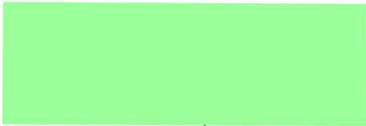




U.S. Citizenship  
and Immigration  
Services

(b)(6)



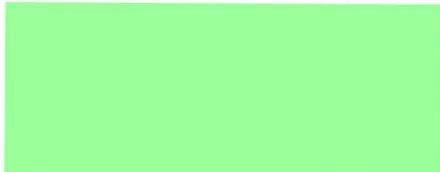
Date: **FEB 13 2013** Office: WASHINGTON DISTRICT

File:

IN RE: Applicant:

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:

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,

Ron M. Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Washington, D.C. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. A subsequent motion to reopen and reconsider was granted and the AAO's previous decision was affirmed in part and withdrawn in part. A second motion to reopen and reconsider was summarily dismissed as untimely. The AAO granted a third motion to reopen and reconsider. The AAO affirmed the field office director's decision and its subsequent decisions in the September 19, 2012 decision on the applicant's motion. The matter is now before the AAO on a fourth motion to reopen and reconsider.<sup>1</sup> The motion to reopen and reconsider will be dismissed, and the application will remain denied.

The applicant is a native and citizen of Pakistan 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)(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 he performed diplomatic or semi-diplomatic duties, that compelling reasons prevent his return to Pakistan, or that his adjustment would be in the national interest of the United States. The field office director also noted that the Department of State issued its opinion on February 25, 2008 advising that the applicant's reasons to remain in the United States are not compelling. *Decision of Field Office Director*, dated February 28, 2008.

In an August 11, 2010 decision, the AAO granted the applicant's motion to reopen the matter, reconsidered the evidence submitted, withdrew its previous decision that the applicant did not perform diplomatic or semi-diplomatic duties and affirmed its previous decision to deny the application based on the fact that the applicant did not establish compelling reasons why he cannot return to Pakistan.

On second motion, the AAO determined that the applicant's motion was untimely filed and dismissed the motion. The AAO noted that even if the motion was accepted as timely, that the evidence of record including evidence submitted with the second motion does not establish that the applicant has established compelling reasons within the meaning of Section 13 that prevent him and his family from returning to Pakistan.

On the third motion, counsel for the petitioner asserts that the AAO erred in its decision to dismiss the application on the grounds that (1) the AAO narrowly construed the meaning of "compelling reasons" that renders the applicant unable to return to Pakistan, instead of applying the more broader interpretation of the amended law; and (2) that the AAO did not consider the applicant's fear based on the perception of the applicant and his family as "westernized, pro USA and or spies of USA,"

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<sup>1</sup> On the Form I-290B dated October 18, 2012, counsel indicated at part 2B that he is filing an appeal to the AAO's September 19, 2012 decision. The record does not indicate that there is a pending appeal in this case. The September 19, 2012 decision cited by counsel on the Form I-290B is a decision on a motion to reopen and reconsider. As there is no pending appeal in this case, the AAO will treat the current Form I-290B as a motion to reopen and reconsider.

who are targeted based on these perceptions. Counsel submitted copies of documents previously submitted into the record, a copy of an excerpt of a report from the Human Rights Commission on Pakistan for 2009, and a copy of an on-line news article on Pakistan, dated August 25, 2010, regarding extrajudicial killings and mob violence in some parts of the country. Counsel claims that the applicant's reason for being unable to return to Pakistan is not based solely on economics and the education of his children in the United States, but is also because the applicant and his family fall into a special group of individuals perceived as "having westernized value" and that they will be "subjected to persecution by the extremists, fundamentalist pro-Taliban, anti US elements and ransom seeker thugs, in Pakistan, for which the government is unwilling or unable to control." Counsel asserts that the applicant and his family have not lived in Pakistan for more than 30 years, that they have adopted western values, and would be viewed as targets of the pro-Taliban people who are involved in kidnapping.

Counsel contends that the benefits of Section 13 are not limited to persons who are made stateless or homeless by changes in the accrediting State but rather has been extended to all individuals who provide compelling reasons for being unable to return to the accrediting nation. Counsel also contends that "whether the fear which is in the mind of the alien and his family is bona fide or not, is a matter of subjective test, and can be determined by the re-opening and providing the alien and his family opportunity of another interview, in which it could be determined whether the fear is bona fide or not."

The AAO considered the evidence submitted on the third motion and determined that the applicant failed to demonstrate that compelling reasons within the meaning of Section 13 preclude his and his family's return to Pakistan. The AAO dismissed the motion and affirmed its previous decisions.

On the current motion, counsel submits a brief reasserting the same facts and arguments he had proffered in prior motions that have been fully discussed in the AAO's prior decisions. Counsel submitted more country condition information on the lack of security, and continued threats by Islamist groups and anti-government groups in Pakistan.

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 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.

In the current motion, counsel has provided no new facts to be discussed in the motion to reopen. Rather, counsel has reiterated the same assertions as in his previous motions. Accordingly, the

applicant has failed to comply with the requirements for a motion to reopen. The motion will be dismissed.

As to the motion to reconsider, 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. Counsel continues his assertions that the applicant and his family falls in the category of group "having westernized values, being rich, being pro-USA or US spies," and that they will be targeted for kidnapping by Muslim extremists in Pakistan. In support of these assertions, counsel submitted copies of on-line news articles and other country condition information on Pakistan regarding the continued violence against individuals, including kidnap for ransom in Pakistan. Counsel however, provided no probative evidence demonstrating that the applicant and/or his family would be specifically targeted for kidnapping by the extremist groups in Pakistan because of his past government employment. The evidence fails to satisfy the requirements of a motion to reconsider. The motion to reconsider is dismissed.

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 Pakistani government due to political changes in Pakistan 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 Pakistan because of any action or inaction on the part of the government of Pakistan 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 are affirmed. The application remains denied.