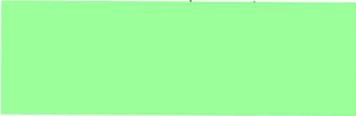




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **FEB 13 2013**

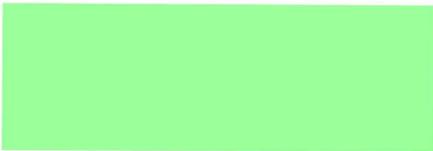
Office: WASHINGTON DISTRICT

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 A subsequent motion to reopen and reconsider was granted and the AAO's previous decision was affirmed in part and withdrawn in part.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 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.¹ 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 the immediate relative of 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's father 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.

The field office director denied the applicant's adjustment application on the basis of his father's ineligibility for benefits under Section 13. Counsel appealed both decisions. In a separate decision, the AAO dismissed the appeal of the applicant's father on the grounds that he failed to establish that he performed diplomatic or semi-diplomatic duties and that he failed to establish compelling reasons that prevent his return to Pakistan as required under Section 13. As the applicant's eligibility for adjustment under Section 13 derived from the eligibility of his father, and the applicant had not asserted compelling reasons separate from those claimed by his father, the AAO also determined that the applicant was ineligible for adjustment of status.

On a previous motion, the AAO withdrew its previous determination that the applicant's father had not established that he performed diplomatic or semi-diplomatic duties as an accountant for the Consulate General of Pakistan [REDACTED] and affirmed its previous decision that the applicant's father had not established that compelling reasons prevent his return to Pakistan. The AAO did not reach the issue regarding whether the applicant's father's adjustment of status would be in the national interest of the United States. In a separate decision, the AAO granted the applicant's father's motion to reopen and reconsider its previous decision and upon review of the information presented on motion, affirmed its decision to dismiss the appeal. As the applicant's eligibility for

¹ 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.

adjustment under Section 13 derives from the eligibility of his father, and the applicant has not provided new facts or pertinent precedent decisions separate from those claimed by his father, the previous decision dismissing the applicant's appeal is also affirmed.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. Accordingly, the AAO's previous decisions remain undisturbed.

ORDER: The previous decisions of the AAO are affirmed. The application remains denied.