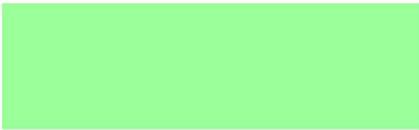




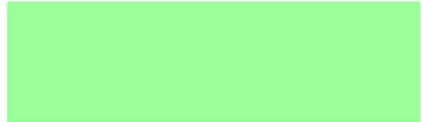
U.S. Citizenship  
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Services

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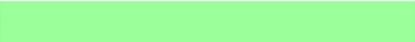
Date: Office: WASHINGTON DISTRICT

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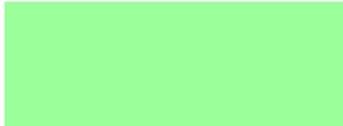
JUN 03 2013

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.

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 the Administrative Appeals Office (AAO) dismissed a subsequently filed appeal, and two subsequently filed motions. The matter is again before the AAO on a third motion to reopen or reconsider. The motion will be dismissed. The application remains denied.

The applicant is a native and citizen of Bangladesh 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)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

The field office director denied the application for adjustment of status after determining that the applicant had not established: that he performed diplomatic or semi-diplomatic duties; and that compelling reasons prevent his return to Bangladesh. The field office director also noted that the Department of State issued its opinion on May 12, 2008 advising that it could not favorably recommend this matter because the applicant's reasons to remain in the United States are not compelling.

On February 23, 2010, the AAO affirmed the field office director's determination that the applicant failed to establish that he had performed diplomatic or semi-diplomatic services for the Permanent Mission of Bangladesh to the United Nations in New York and that he had failed to present compelling reasons that prevent his return to Bangladesh. As the applicant had not established that compelling reasons prevent his return to Bangladesh, the AAO did not address the issue of whether adjustment of status would be in the national interest of the United States.

On September 9, 2010 and again on August 27, 2012, the AAO dismissed the applicant's motion to reopen or reconsider. In dismissing the motion, the AAO noted that the record on motion did not include any new facts and that the applicant's affidavit did not satisfy either the requirements of a motion to reopen or a motion to reconsider.

On October 15, 2012, the applicant filed a third motion. The AAO will dismiss this motion because (1) the motion is untimely; and (2) the statement submitted by the applicant on motion does not satisfy either a motion to reopen or a motion to reconsider.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that a motion to reopen a proceeding or reconsider must be filed within 30 days of the underlying decision, except that failure to file during this period may be excused when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant. The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E) requires that a motion be submitted to the office *maintaining* the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

The AAO rendered its decision on August 27, 2012. The Form I-290B , Notice of Appeal or Motion, is very clear in indicating that the motion is not to be sent directly to the AAO. The AAO's decision indicates that all motions must be submitted to the office that originally decided the case. The applicant, nevertheless, sent the motion to the AAO, which was received on October 1, 2012. The AAO promptly returned the Form I-290B to the applicant on October 2, 2012 with instructions to where the Form I-290B must be filed. The motion was finally filed and properly received on October 15, 2012, 50 days after the date of the AAO's decision.<sup>1</sup> The applicant has not demonstrated that the delay in filing was reasonable and beyond his control. Thus the motion is untimely and will be dismissed.

The statement submitted by the applicant on motion does not satisfy either a motion to reopen or a motion to reconsider. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) 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 United States Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The applicant reiterates on motion that he performed diplomatic or semi diplomatic duties and that he could not return to Bangladesh because of a change in the political party in his country. The applicant indicated that he was appointed to his position under the Awami League and that at the conclusion of his service the BNP party had taken over so he decided not to return to Bangladesh and applied for adjustment of status under section 13. The applicant does not address the issue of his failure to establish that he performed diplomatic or semi-diplomatic duties for the Permanent Mission of Bangladesh to the United Nations. He does not provide any compelling reason why he is unable to return to Bangladesh. Accordingly, the applicant has not provided new facts for consideration and, thus, the motion to reopen will be dismissed.

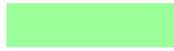
The applicant fails to provide any reasons for reconsideration that are supported by pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or USCIS policy. The applicant also fails to provide pertinent precedent decisions or evidence to establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). 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. Accordingly, the motion will be dismissed and the previous decision of the AAO will not be disturbed.

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<sup>1</sup> The record reflects that in 2009, the applicant incorrectly filed a motion with the AAO. The AAO returned the motion to the applicant with instructions on where to properly file the motion. The record also reflects that the applicant timely filed the motion after the return from the AAO.

(b)(6)



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**ORDER:** The motion is dismissed. The previous decisions of the AAO is affirmed. The application remains denied.