



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **OCT 03 2013** OFFICE: NATIONAL BENEFITS CENTER 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 APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: DISCUSSION: The application was denied by the Director (director), National Benefits Center. The applicant appealed the denial to the Administrative Appeals Office (AAO), and, on February 5, 2013, the AAO dismissed the appeal. The applicant has filed a Form I-290B, Notice of Appeal or Motion indicating at part 2B of the form that he is filing a motion to reopen the decision of the director dated August 24, 2012.¹

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.

On March 5, 2013, the applicant filed a motion to reopen. The AAO will dismiss this motion because the applicant has failed to satisfy the requirements for a motion to reopen or a motion to reconsider.

The motion will be dismissed for failing to meet an applicable requirement. The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." At part 3 of the Form I-290B, the applicant stated "my filing for adjusting my status based on my former diplomatic status (A2) under Section 13 was denied because my career has been judged by your office and AAO to be primarily technical and administrative, rather than diplomatic or semi-diplomatic. I therefore would like to reopen the I-485 application under a different category: EB1-A."²

¹ A motion to reopen or reconsider shall be filed with the office that made the last decision, in this case, the AAO. Although the applicant provided the date of the previous decision as August 24, 2012 and the office where the decision was issued as Lee's Summit; however, the director's decision was appealed to the AAO and the appeal was dismissed by the AAO on February 5, 2013. There is no other application that is pending adjudication or appeal.

² The record reflects that the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, application based on Section 13 of the Act, which was denied by the director and dismissed by the AAO. There is no evidence in the record that the applicant has an outstanding adjustment of status application that is based on an approved employment based immigrant visa for aliens with extraordinary ability or outstanding professors and researchers (EB1.) The applicant cannot file an appeal or motion based

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.

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

on a nonexistent application. For each adverse decision, an applicant must submit a separate Form I-290B and associated fee. See 8 C.F.R. § 103.3(a)(1). The applicant should consult the USCIS official website to determine the requirements for filing an adjustment of status application based on an EB1 visa category. The AAO shall treat the current motion as pertaining to AAO decision to dismiss the Section 13 application.