



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **OCT 11 2013** Office: NATIONAL BENEFITS CENTER FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Permanent Resident Pursuant to Section 13 of the Immigration and Nationality Act of 1957, Pub. L. No. 85-316, 71 Stat. 642, as amended.

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 M. Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, National Benefits Center and the Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed. The application remains denied.

The applicant is a native and citizen of Mexico who is seeking to adjust his status to that of a 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 director denied the Form I-485, Application to Register Permanent Residence or Adjust Status after determining that the applicant had failed to demonstrate that compelling reasons prevent his return to Mexico. The director also noted that the Department of State issued its opinion on December 15, 2012, recommending that the application be denied because the applicant did not provide compelling reasons preventing his return to his country. *Decision of the Director*, dated January 15, 2013.

On May 9, 2013, the AAO, upon a *de novo* review of the evidence of record determined that the applicant was not eligible for a Section 13 benefit because the applicant had failed to demonstrate that his position and his duties as a [REDACTED] at the Mexican Consulate in Houston, Texas was diplomatic or semi-diplomatic in nature.<sup>1</sup> As the applicant was not eligible for benefits under Section 13 of the Act, the AAO did not address the issues of whether the applicant had established compelling reasons why he cannot return to Mexico and whether his adjustment of status would be in the national interest of the United States. The AAO dismissed the appeal accordingly.

On June 7, 2013, the applicant submitted a Form I-290B, Notice of Appeal or Motion and indicated at part 2 of the form that he was filing a motion to reopen and reconsider the AAO's decision of May 9, 2013. The applicant asserts on motion that the AAO misunderstood his statement regarding compelling reasons why he cannot return to Mexico. The applicant also asserts that he has additional information that can be considered in his favor.

In support of the motion, the record includes, but is not limited to, a statement from the applicant dated June 2, 2013, a copy of a letter from U.S. Department of State, Assistant Chief of Protocol, acknowledging the appointment of the applicant as a [REDACTED] at the Consulate General of Mexico in Houston, Texas, a copy of Diplomatic and Consular Immunity – Guidance for Law Enforcement and Judicial Authorities, published by U.S. Department of State, Bureau of Diplomatic Security, Office of Foreign Missions, and a copy of a letter from Mona Cortina Borja, Director of International Litigation, dated February 17, 2006.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

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<sup>1</sup> The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)

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 June 2, 2013 statement, the applicant stated that he indicated his official title at the consulate as clerk because that was the designation given to his position by the U.S. Department of State on his accreditation letter. The applicant claimed that in addition to issuing Mexican matriculas and passports, that he was also commissioned to assist Mexican nationals who are affected during a disaster and in other bad circumstances. The applicant described the duties and responsibilities of the Consulate General of Mexico in Houston with respect to representing the Secretariat of Foreign Affairs of Mexico in promoting the understanding and awareness of Mexican culture and expanding Mexico's presence within its consular jurisdictions. The applicant did not however indicate his role if any, in "promoting the understanding and awareness of Mexican culture" within the consular jurisdiction.

In this matter, we have reviewed the applicant's statement and other documents submitted in support of said motion and find them insufficient to overcome the basis of the AAO's dismissal of the appeal. The applicant provided no detailed information indicating his actual role and duties as a clerk at the consulate and whether the duties involved clerical and administrative duties or duties that are diplomatic or semi-diplomatic in nature. The applicant cited the letter from [REDACTED], as evidence of his expanded role at the consulate. The letter however, does not establish that the applicant was entrusted with duties that are diplomatic or semi-diplomatic in nature. The letter indicated that the applicant, for a limited time, worked with the Liaison Office of the General Consulate for Mexico in Houston at [REDACTED] Louisiana, to identify and detect the most urgent needs of Mexican nationals who were affected by Hurricane Katrina in 2005. This document does not establish that the applicant's position as a clerk at the consulate was diplomatic or semi-diplomatic in nature. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The evidence of record does not demonstrate that the applicant had any formal advisory or decision-making role or that he had authority to represent the government of Mexico before any state or federal government agencies of the United States or other international organizations. Accordingly, the record in this matter is insufficient to demonstrate that the applicant was entrusted with duties of a diplomatic or semi-diplomatic nature. The applicant is therefore statutorily ineligible to adjust status under Section 13 of the Act.

The applicant has not provided any reasons for reconsideration that are supported by pertinent precedent decisions to establish that the AAO's prior decision was based on an incorrect application

of law or United States Citizenship and Immigration Services (USCIS) policy. The applicant has also failed to provide pertinent precedent decisions or evidence to establish that the AAO's decision was incorrect based on the evidence of record at the time of the initial decision or established that the director or the AAO misinterpreted the evidence of record. Therefore the motion shall be dismissed.

The motion shall also be dismissed for failing to meet another 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." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirement listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. See *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion will be dismissed.

It is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The applicant has not sustained that burden. Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

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